

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA * Case No. 17-CR-00281 (ERK)
 *
 * Brooklyn, New York
 v. * January 16, 2018
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 *
CARLOS RICHARD MARTINEZ, *
 *
 Defendant. *
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* * * * *

TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE EDWARD R. KORMAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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 UNITED STATES ATTORNEY

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1 (Proceedings commenced at 10:28 a.m.)

2 THE CLERK: Please remain seated.

3 THE COURT: Good morning, everybody.

4 MS. ARGENTIERI: Good morning.

5 THE COURT: We're ready to bring in the jury?

6 MS. ARGENTIERI: Yes.

7 THE COURT: Bring in the jury.

8 (Jury enters the courtroom.)

9 THE CLERK: All rise.

10 THE CLERK: Please be seated.

11 THE COURT: Will you raise your right hand.

12 NICOLE MCFARLAND, GOVERNMENT'S WITNESS, SWORN

13 DIRECT EXAMINATION

14 BY MS. ARGENTIERI:

15 Q Good morning.

16 A Good morning.

17 Q Please state your name for the record.

18 A Nicole McFarland.

19 Q And can you spell your last name?

20 A M-c-F-A-R-L-A-N-D.

21 Q Where do you work?

22 A I work at the Metropolitan Detention Center in Brooklyn,
23 New York.

24 Q And what is your position there?

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1 A Senior staff attorney.

2 Q How long have you worked there?

3 A At Brooklyn since 2009.

4 Q In brief, what are you duties and responsibilities?

5 A I advise the executive staff and warden on policies and
6 procedures in the institution and any new laws, case law. I'm
7 a liaison between the U.S. Attorney's Office for inmate
8 litigation. And I also gather documents as needed, when needed
9 by the U.S. Attorney's Office.

10 Q What is the MDC made up of?

11 A It's two buildings connected by a -- a hallway between
12 them.

13 Q What is that referred to?

14 A The link.

15 Q And in order to travel through the link, how many doors do
16 you have to go through?

17 A Six, I believe.

18 Q And are those doors all locked?

19 A Yes.

20 Q And how do you get through the locked door?

21 A There's a button you press and you -- it alerts the
22 control center and the control center then buzzes you through
23 each door.

24 Q Can it take 20 minutes to walk between buildings and back?

25 A It can.

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1 Q What is the address of the MDC?

2 A It's 80 29th Street and 100 29th Street.

3 Q And are there nicknames for the buildings?

4 A So there's two buildings. The east building or the old
5 building and the west building and the new building.

6 Q And in 2015, 2016 where were the female inmates housed,
7 which building?

8 A In the east building, old -- the old building.

9 Q And who runs the MDC, what agency?

10 A It's the Federal Bureau of Prisons.

11 MS. ARGENTIERI: Judge, we're going to move in a
12 bunch of documents at once pursuant to the business records
13 exception -- except -- exception, I can't speak this morning,
14 8036. My understanding is that Mr. Ricco has no objection.
15 I'm going to read the numbers.

16 MR. RICCO: That's correct, your Honor.

17 THE COURT: All right.

18 MS. ARGENTIERI: Okay.

19 THE COURT: They're admitted.

20 MS. ARGENTIERI: So GX 100 A through E. 200, 201,
21 202, 203, 239, 204, 227, 228, 222, 205, 209, 2 --

22 MR. RICCO: Oh, stop. You're going too fast.

23 MS. ARGENTIERI: Sorry, sorry. I'm sorry. 20 --

24 MR. RICCO: 228.

25 MS. ARGENTIERI: 228, 223.

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1 MR. RICCO: Okay. Thank you.

2 MS. ARGENTIERI: 205, 209, 210, 234, 235, 222, 221,
3 219, 207, 225, 206, 220-A and B, 226, 229, 230, 231 and 208.

4 MR. RICCO: That's without objection, your Honor.

5 THE COURT: Okay, they're admitted if I haven't
6 already admitted them.

7 (Government Exhibits GX 100 A through E, 200, 201, 202, 203,
8 239, 204, 227, 228, 223, 205, 209, 210, 234, 235, 222, 221,
9 219, 207, 225, 206, 220 A and B, 226, 229, 230, 231, 208
10 received into evidence as of today's date.)

11 Q And had you previously reviewed these documents --

12 A Yes.

13 Q -- Ms. McFarland?

14 A Yes.

15 Q Okay. I'm going to show you and everyone, actually
16 Government's Exhibit 100-A in evidence. To orient the jury,
17 can you describe what this is a map of?

18 A This is the second floor east building. It's a depiction
19 of the entire floor.

20 Q And where, if at all, is the second floor lieutenant's
21 office shown?

22 A So it is the bottom left-hand corner of the picture.

23 Q Can you just draw a circle where you see it.

24 A So this is the lieutenant's area (indicating).

25 MS. ARGENTIERI: Indicating --

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1 A Right there (indicating), sorry.

2 MS. ARGENTIERI: Indicating for the record a circle
3 around the offices in front of the word area in the left-hand
4 corner of the document.

5 A Right. So this is the actual side, the lieutenant's
6 office, that one (indicating) in the bottom right.

7 MS. ARGENTIERI: Indicating the lieutenant's office
8 is the box right above the word area on GX 100-A.

9 Q Showing you Government's Exhibit 100-B. Sorry. What is
10 this?

11 A That's a blown-up depiction of the lieutenant's area.

12 Q And what is what's labeled lieutenant's office?

13 A That is the lieutenant's office.

14 Q And then what is this area over here (indicating) with
15 these two shapes in the upper left-hand corner?

16 A That's the bathroom area.

17 Q And you kind of see like a depiction of a toilet?

18 A Yes.

19 Q Okay. And then next to the lieutenant's office, directly
20 next to it what was that?

21 A It's offices, so there's a -- you enter one door and
22 there's four offices or four areas.

23 Q And just for the record, that's indicating the offices
24 directly above the lieutenant's office?

25 A Yes.

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1 Q Now, this hallway if you were to walk out of the
2 lieutenant -- lieutenant's office and down this hallway
3 (indicating), what would be down that hallway?

4 A They're suicide watch cells.

5 Q And what if instead of walk -- if you walked out of the
6 lieutenant's office and made a right and walked down that
7 hallway, what would be in that area?

8 A So you pass medical then you go around a little further
9 the legal department and computer services.

10 Q What about any religious services?

11 A So I'm not sure when they moved in that area, but the
12 chaplain's office is where that area right above the
13 lieutenant's office is.

14 Q You're saying at some point?

15 A At some point, uh-huh.

16 Q Showing you Government Exhibit 100-C. What is this a
17 diagram of?

18 A That is the six south female unit, or six south unit,
19 sorry. Six south unit.

20 Q And in the bottom area over here (indicating) under the
21 words unit six south, what does that show?

22 A That is the beds and locker area?

23 Q And just above that where there appear to be a rectangle
24 and some circles, what is that area?

25 A That's the common area, so there's some tables and the TVs

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1 are there.

2 Q And beyond the common area with these little rectangles
3 with the Xs, what is that area?

4 A So that's the showers and toilet area.

5 Q What, if any, part of six north can you see in this?

6 A So if you go right behind those Xs and what looks like
7 toilets right here (indicating) that is the other side, so that
8 would be the six north toilets and showers.

9 Q Indicating the toilets and the showers at the top of the
10 document. And can you indicate where the pathway to get to
11 that unit is?

12 A So you can go -- the normal pathway is this way here and
13 you enter over here (indicating). But there's another way to
14 go through over there.

15 Q Okay. So indicating the first pathway a line drawn --

16 A On the left-hand side.

17 Q -- on the left-hand side of the entrance to unit six
18 south. And is there also another entrance over here
19 (indicating)?

20 A But that is -- you don't usually use that entrance.

21 Q And is that locked?

22 A Yes.

23 Q Okay. And 100-D, what does this show?

24 A That is both units together, so six north and six south.

25 Q And Government Exhibit 1 -- 100-E. What does this -- what

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1 does this show?

2 A That's again the second floor lieutenant's area and a
3 little bit down the hallway.

4 Q And is this accurately labeled?

5 A Yes.

6 Q So where it says lieutenant's office this is the
7 lieutenant's office?

8 A Yes.

9 Q And then what does this (indicating) bracket show to
10 the --

11 A That is the bathrooms.

12 Q And then what's over here, these brackets (indicating)?

13 A The suicide watch cells.

14 Q Now, you said you work in the legal department?

15 A Yes.

16 Q Who, if anyone, from the legal department works on
17 weekends?

18 A Nobody.

19 Q And to your knowledge, looking at Government Exhibit 100-B
20 -- actually, I'm sorry, looking at Government Exhibit 100-E,
21 correction, are there cameras that capture the hallways inside
22 this lieutenant's office area?

23 A I don't know.

24 Q Now, how does the Bureau of Prisons document where inmates
25 are housed?

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1 A We have a system that's called SENTRY, so it is a computer
2 system and it's entered where each inmate is housed at a
3 particular time.

4 Q Okay. And when you say "where inmates are housed," what
5 information does it give?

6 A So it will give the institution that they're housed in,
7 the exact bed and the date they entered that bed, what unit
8 they're on, so...

9 Q And what other information is available on SENTRY?

10 A There's a lot of information. It would be the crime that
11 they're convicted of, all the public information, what
12 sentencing court they're out of. It could be where they're
13 designated. Do they have detainers.

14 Q What is a detainers?

15 A A detainers is when another agency wants the inmate after
16 we're done with them. So, for example, ICE may want the inmate
17 after we're done with them, so they'll put a detainer on them
18 so we know that they have to go to that particular agency.

19 Q Meaning that they just won't be released?

20 A Correct.

21 Q Who has access to TruScope?

22 A Just about everyone in the -- sorry, all the staff at the
23 institution.

24 Q What is ICE?

25 A ICE is the Immigration & Customs Enforcement.

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1 MS. ARGENTIERI: Judge, may I approach the witness?

2 THE COURT: Yes.

3 Q I'm showing you Government Exhibit 200 in evidence. What
4 in the -- I'm showing you the register number for this inmate.
5 Can you explain to the jury what a register number is?

6 A It's a -- it's a unique identifier that's given to each --
7 each inmate that's in the institution -- in the Bureau of
8 Prisons. So each inmate within the Bureau of Prisons have --
9 has a unique number assigned to them.

10 Q And can you review the inmate name and register number for
11 Government Exhibit 200?

12 A Yes.

13 Q And are those housing records for the person -- for the
14 name in Government Exhibit 2-A?

15 A Yes.

16 MS. ARGENTIERI: The document I'm just publishing to
17 the jury, Government Exhibit 2-A, so they know the name of the
18 witness we're referring to -- I mean, of the -- the name of
19 inmate we're referring to.

20 Q Now, looking at Government Exhibit 200, and for the record
21 I've obscured the inmate's name and register number, where was
22 the in -- where was the inmate depicted in Government Exhibit 2
23 housed, according to this record?

24 A So she was housed between MDC Brooklyn and NYM, which is
25 MCC New York.

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1 Q And just explain to the jurors how to read this document.

2 A Sure. So on the left -- the column all the way to the
3 left is the facility name, so FCL, facility. And BRO stands
4 for Brooklyn, so MDC Brooklyn. And then NYM would be MCC New
5 York. The assignment is the particular bed assignments. So E-
6 17-003-U is her assignment. And the description ends with just
7 a more longer description of the assignment.

8 The start date is when she entered that bed
9 assignment and when she left the bed assignment.

10 Q So where was this inmate from Government Exhibit 2-A
11 housed before MDC Brooklyn?

12 A MCC New York.

13 Q And you can tell that by this N -- NYM designation?

14 A Yes.

15 Q And where -- where it says -- and where was this inmate
16 housed between March 2, 2015 and April 29, 2016?

17 A MDC Brooklyn.

18 Q And if you read across this top line where it says house E
19 range 17, what does that mean?

20 A So house E is the sixth floor and range 17 indicates the
21 south unit, so it's six south.

22 Q And then where it says bed, is it fair to say in this
23 column the numbers are the bed numbers, and what does the U
24 mean?

25 A U is upper, so it's the upper bunk.

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1 Q What's the other option?

2 A L for lower bunk.

3 Q I'm showing you Government Exhibit 201 in evidence. What
4 kinds of records are these?

5 A It's also a housing history, a quarter's history.

6 Q For who?

7 A Danilda Osoria.

8 Q And what does this record say about where Danilda Osoria
9 was housed between April 30, 2014 and March 18, 2016?

10 A MDC Brooklyn.

11 Q And what does this indicate about her final bed assignment
12 between October 28, 2015 and March 18, 2016?

13 A So also six -- six south, so house E is sixth floor, range
14 15 is south. And it's bed three lower.

15 Q It was a lower bunk?

16 A Correct.

17 Q Showing you Government Exhibit 202 in evidence. What
18 inmate does this relate to?

19 A Melva Vasquez.

20 Q And where does this document say that she was housed
21 between February 2015 and December 2000 -- December 16, 2015?

22 A MDC Brooklyn.

23 Q And looking at this record, what does this say about where
24 she was housed between May 23, 2015 and June 3, 2015?

25 A She was in the special housing unit. So Z represents the

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1 special housing unit.

2 Q And what is that referred to as?

3 A The SHU.

4 Q And where it says AD, what does that mean?

5 A Administrative detention.

6 Q And what does that mean?

7 A So it's a depiction. There's two depictions for the
8 special housing unit, administrative detection and disciplinary
9 segregation. Administrative detention could be a couple of
10 different reasons either a pending investigation, it could be
11 protective custody.

12 Q And looking at this inmate's last two bed assignments, did
13 she have an upper bunk or a lower bunk?

14 A Upper.

15 Q Government's Exhibit -- Exhibit 203. What inmate does
16 this relate to?

17 A Kiara Maldonado.

18 Q What does this record indicate about when Kiara Maldonado
19 was in the MDC?

20 A She arrived on October 7, 2015 and left on December 21,
21 2015.

22 Q And where does this -- and what unit was she in?

23 A She also was in house E, range 11, so six south, bed three
24 upper.

25 Q Bed three upper. Showing you Government Exhibit 239.

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1 What inmate does this relate to?

2 A Odie De La Cruz.

3 Q And looking at the time between February 19, 2015 and
4 April 2016, what facility was this inmate housed in?

5 A MDC Brooklyn.

6 Q In what unit?

7 A It looks like -- you're looking at February. Yep, so it
8 would be six south as well.

9 Q And the same goes for between April 13 and May 8, 2016,
10 MDC?

11 A Yes.

12 Q Six south?

13 A Yes.

14 Q What is True Phone?

15 A True Phone is the system that we use for monitoring social
16 phone calls of inmates.

17 Q And are all inmate's social calls recorded?

18 A Yes.

19 Q Are they all monitored?

20 A No.

21 Q How long does the MDC keep recorded social calls?

22 A It's 180 days.

23 Q And what happens after 180 days?

24 A They are -- it's deleted or written over.

25 Q And is there an exception to that?

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1 A Sometimes if they're saved for a specific purpose, so if
2 we have a subpoena to save them or there's some sort of reason
3 that we need to save them they can be saved past the 180 days.

4 Q How would -- how would that happen?

5 A Someone would actually have to physically go in and lock
6 -- we call lock the calls.

7 Q And who had the ability to do that?

8 A Usually it's SIS.

9 Q Okay.

10 MS. ARGENTIERI: May I approach, Judge, with
11 Government Exhibit 204?

12 Q What is this?

13 A That is a call's monitored report.

14 Q And does this relate to an inmate -- the inmate depicted
15 in Government Exhibit -- or the name in Government Exhibit --
16 Exhibit 2-A?

17 A Yes.

18 Q For the record I just covered the name. And is this a
19 true phone report for calls monitored from MDC?

20 A Yes.

21 Q Now, I'm showing you the bottom of page 5 of Government
22 Exhibit 204. Can you just explain to the jury what does --
23 what's in the number column?

24 A That's the number that was dialed by the inmate.

25 Q And then what is in the call start column?

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1 A So that's the date and time of the phone call, when they
2 started it.

3 Q When the call is made by the inmate?

4 A Correct.

5 Q So, for example, this call, when was this call made by an
6 inmate?

7 A So February 7, 2016 at 1:44 p.m.

8 Q And then DUR column, what does that mean?

9 A That's how long the call lasted, 15 minutes.

10 Q And then moving over to this other half of the page where
11 it says type P, what does that mean?

12 A So that means playback. That means the call is listened
13 to on a playback. So it was recorded and then at some point
14 later on somebody listened to it.

15 Q And TF 14643, what is that number?

16 A That's the person who monitored the call, so the staff
17 member who monitored the call.

18 Q And is that a unique number for each staff member?

19 A Yes.

20 Q And then under monitor start, what information is in this
21 column?

22 A That's the date and time that the person depicted in the
23 previous column monitored the phone call.

24 Q So the date and time the user monitored the call?

25 A Correct.

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1 Q And what if the user -- and then what is monitor duration?

2 A How long they monitored the call.

3 Q And if a user monitor -- played a call more than once
4 would there be a record of that?

5 A Yeah. So if you notice this one (indicating) has two
6 dates and times listed.

7 Q So on this page it shows that whoever TF 14643 is listened
8 to this call twice on February 8th?

9 A Yes.

10 Q And this is -- just to be clear, the monitor start time is
11 the time that he listened to it, or he or she listened to it?

12 A Right. So that's when they started listening.

13 Q Now, what is a True Access user form?

14 A It's the form that -- it's a form that's kept so that we
15 know what access each user has for the True system.

16 Q Okay. I'm showing you Government Exhibit 227. Is this
17 the -- what is this document?

18 A It's the True access user form for Carlos Martinez.

19 Q And what does this show about what systems he had access
20 to?

21 A True Access, True Phone, True Intel, True Links, True Paid
22 and TruScope.

23 Q And what kinds of information can you get from these
24 different applications?

25 A All kinds of information about the inmate, so they'll be

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1 able to monitor calls, you'd be able to enter information into
2 logs, things like that.

3 Q Okay. And then on the top part of this form where it says
4 TF 14742, what is that?

5 A That's their user ID, so...

6 Q So that's his unique number?

7 A Correct.

8 Q Government Exhibit 228. What is that?

9 A That's the True Access form for Tomas Rodriguez.

10 Q And does it indicate his -- his user ID?

11 A Yes.

12 Q What is it?

13 A TF 14643.

14 Q And Government Exhibit 223. Which user is this the True
15 Access form for?

16 A Raymond King.

17 Q And his TF number is over here (indicating)?

18 A 14637.

19 Q Now, what is BOPware?

20 A BOPware is another system we use. It -- there's a couple
21 different things you can do in it. One is visiting, another is
22 special housing unit reports, things like that.

23 Q Okay. And who has access to BOPware?

24 A Almost -- most staff.

25 Q What, if any, records are kept of inmate visits?

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1 A So when an inmate visits they -- there's -- the officer
2 logs them into the -- the system and that's how the visit
3 started. They also sign in.

4 Q Okay. And -- okay. Now, you said when a visitor comes
5 they have to sign in?

6 A Uh-huh. Yes.

7 Q And then in a typical situation what happens with the
8 inmate?

9 A They're -- well, once they get into the visiting room
10 they're brought down to the visit -- visiting room.

11 Q So I just want to be precise, once the visitor gets into
12 the visiting room the inmate is brought down?

13 A That is correct.

14 Q And are there situations where the visitor is brought in
15 and the inmate not be -- may not be brought down?

16 A I've heard of situations.

17 Q Okay. So I'm just going to show you some records so you
18 can explain them.

19 MS. ARGENTIERI: Judge, may I approach again?

20 THE COURT: You don't have to ask me.

21 MS. ARGENTIERI: All right. I'm approaching the
22 witness with Government Exhibit 205.

23 Q Can you just look at the register number for this inmate.

24 A Yes.

25 Q And is this for the same inmate whose records are at

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1 Government Exhibit 200?

2 A Yes.

3 Q So, therefore, Government Exhibit 205 are the visitor
4 records for the inmate whose name is in Government Exhibit 2=A?

5 A Yes.

6 Q So showing you Government Exhibit 205, can you just
7 explain to the jury what this shows?

8 A It shows this person's visitor list, so who was on their
9 visiting list. And then the visits that they had.

10 Q And how many visits are indicated on this?

11 A One.

12 Q And who was the visitor?

13 A Noel Lopez.

14 Q And does it list a state for -- what information is under
15 city and state?

16 A New Haven, Connecticut.

17 Q Okay. And who does that information relate to, the
18 visitor or the inmate?

19 A The visitor.

20 Q And then where it says phone number, whose phone number is
21 that?

22 A The visitor's.

23 Q And then where it says start date and end date, can you
24 explain that?

25 A So the start date is the time that they logged in by the

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1 officer for the visit, so the date and time. And the end date
2 is the end date of the visit.

3 Q Are -- are visitors allowed to stay at the MDC overnight?

4 A No.

5 Q So can you explain why the next day would appear as the
6 end date?

7 A It's my understanding that the -- the visitor does not log
8 out with the officer, so they just walk out of the institution
9 when they're done with their visit, so the officer when -- the
10 next day when the officers log into the system it logs
11 everybody out of the system from the day before that didn't get
12 logged out.

13 Q So in other words, the inmates aren't logged when they
14 leave and when the computer is restarted the next day everybody
15 is logged out, but they left the day before?

16 A That is correct.

17 Q The same day of the visit?

18 A That is correct.

19 Q Okay. Okay. So showing you Government Exhibit 209. How
20 can the jury tell which inmate these records relate to?

21 A So it would be the register number on that top left.

22 Q Where it says register number?

23 A Yep.

24 Q And what kind of record is this?

25 A That is the --

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1 Q Can you see what's checked on the top? I know it's
2 little.

3 A Sorry. Yeah, sorry. It's the -- the visits for a
4 particular -- that particular inmate.

5 Q And so showing you Government Exhibit 201. Is that the
6 same register number?

7 A Yes.

8 Q So can you tell what inmate Government Exhibit 209 relates
9 to?

10 A So it's Danilda Osoria's visits.

11 Q Okay. And just directing your attention to December 13,
12 2015. Did inmate Osoria receive a visit?

13 A Yes. Yeah, so at 10:58 a.m.

14 Q And it looks like one, two, three?

15 A Yes.

16 Q And how are visitors logged; is it just the visit or
17 individual visitors?

18 A Each visitor gets logged in.

19 Q Now, I'm going to show you Government Exhibit 210. What
20 inmate do these records relate to?

21 A The register number 90641054.

22 Q Looking back at Government Exhibit 202, how can the jurors
23 tell which inmate these records relate to?

24 A So the register number is the same, so it's Melva Vasquez.

25 Q And looking at Government Exhibit 210, what records are

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1 those?

2 A Again, the visits to Melva Vasquez.

3 Q And directing your attention to the two top entries, what
4 do these indicate?

5 A Visits on December 12, 2015 and December 13, 2015.

6 Q So that a visitor came to visit on those two days?

7 A Yes.

8 Q Showing you Government Exhibit 210, what does this record
9 indicate about when before December 12th and 13th inmate
10 Vasquez had a visit?

11 A June 6, 2015.

12 Q Okay. Showing you Government Exhibit 234, what inmate do
13 these records relate to?

14 A Register number 09974082.

15 Q And looking at Government Exhibit 203, how can the jurors
16 tell what inmate this relates to?

17 A Again, the register number matches, so it Kiara Maldonado.

18 Q Okay. So looking at Government Exhibit 234, what is that?

19 A It's Maldonado's visits.

20 Q And what do these records indicate about whether she had a
21 visit on December 13th?

22 A So it indicates she had a visit on December 13, 2015 at
23 2:08 p.m.

24 Q Okay. Showing you Government Exhibit 235, what inmate do
25 these records relate to?

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1 A 674011053.

2 Q Showing you Government Exhibit 239, which we went over,
3 how can the jurors tell what inmate these records relate to?

4 A Again, the register number matches Odie De La Cruz.

5 Q And so what is Government Exhibit 235?

6 A Ms. De La Cruz's visits.

7 Q And looking at December 13, 2015, what, if any visitors,
8 came to MDC for De La Cruz that day?

9 A It's two visitors at 11:42 a.m and 11:45 a.m.

10 Q And just so that's clear, that's the -- the start date is
11 -- reflects what time?

12 A The time that the visitor checks in with the officer.

13 Q What record is kept of -- of inmate discipline -- the
14 inmate discipline?

15 A So the -- we -- in SENTRY there's a record of all the in
16 -- each inmate's discipline.

17 Q I'm showing you Government Exhibit 222, what is this
18 record?

19 A It is Melva Vasquez's disciplinary record.

20 Q And what does this indicate about when this incident
21 happened?

22 A So the incident happened on May 23, 2015.

23 Q And what did this incident -- what does this incident
24 report say about what she was disciplined for?

25 A She lost her visiting privileges for 180 days.

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1 Q And what did it say about why?

2 A Um, because she had unauthorized physical contact.

3 Q And just so the jurors can see, it says that right here
4 (indicating), "unauthorized physical contact" --

5 A Yes.

6 Q -- and then under it "180 days?"

7 A Yes.

8 Q And when does it say the discipline started?

9 A So it's June 8, 2015.

10 Q And when did it end?

11 A December 4, 2015.

12 Q So --

13 THE COURT: I assume this was voluntary on her part?

14 THE WITNESS: The unauthorized --

15 THE COURT: Yes.

16 THE WITNESS: -- physical contact?

17 THE COURT: Uh-huh.

18 THE WITNESS: I can't tell from that report.

19 Q Does it say unauthorized physical contact with female?

20 A Yes.

21 Q And if we could take -- talk about discipline for a
22 second. What is -- you saw a reference to a DHO on that
23 record. What is a DHO?

24 A It's the disciplinary hearing officer.

25 Q And who is that?

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1 A He is or she is depending on who it is at the time, um
2 the person who is -- hears the different -- the -- the evidence
3 and -- for that particular incident report and makes a
4 determination as to whether the inmate committed the prohibited
5 act.

6 Q And who did -- who is the DHO employed by?

7 A He's employed by the Bureau of Prisons.

8 Q Is the person a correctional officer?

9 A Everybody is a correctional worker that works in the
10 institution.

11 Q And does the disciplinary hearing officer --

12 THE COURT: Is there a separate person, even though
13 they're off -- they're -- what kind of officers are they, did
14 you say?

15 THE WITNESS: So it is a particular position within
16 the institution --

17 THE COURT: And the person who holds it is -- just
18 does that work?

19 THE WITNESS: That is correct.

20 THE COURT: Doesn't do other work in the prison?

21 THE WITNESS: At the time that this happened, yes,
22 that's exactly what -- what it was.

23 Q Has that changed?

24 A We -- this person -- particular person has retired, so we
25 have a couple of different people temporarily hearing incident

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1 reports?

2 Q Corrections officers?

3 A I believe it's a couple lieutenants.

4 Q And --

5 THE COURT: So are they independent of the people who
6 supervise or would a particular lieutenant or officer just be
7 brought in?

8 THE WITNESS: So they get specialized training for
9 the disciplinary hearing procedures. And -- so this person who
10 heard this report actually is supervised by the regional office
11 in Philadelphia and not at the institution.

12 THE COURT: No, but what I'm trying to say is, is
13 that all he does or she?

14 THE WITNESS: Yes.

15 THE COURT: She doesn't make -- otherwise engage with
16 the -- with the people at the institution?

17 THE WITNESS: That particular person at the time, no.

18 Q What, if any discipline, can -- can a unit team give out?

19 A So they can remove privileges, so phone, commissary,
20 e-mail privileges, pretty much off the top of my head that's
21 what I can think of.

22 Q Who makes up the unit team?

23 A So it's a counselor, case manager, unit manager and a
24 secretary, but...

25 Q What, if any discipline, can a lieutenant give out?

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1 A None.

2 Q What, if any, authority does a lieutenant have to place
3 someone in the SHU?

4 A He can place somebody in the SHU that they believe may
5 have committed a prohibited act.

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1 Q In your experience, do inmates know how this disciplinary
2 system works?

3 MR. RICCO: Objection as to what inmates know. Just
4 the form of the question, Judge.

5 THE COURT: Yes, sustained.

6 MR. RICCO: As to form.

7 THE COURT: As to the form.

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1 THE COURT: If an inmate wanted to make a complaint
2 what would the inmate do?

3 Q Sorry.

4 A If the inmate wanted to a complaint they would fill out a
5 informal grievance with the institution and file it with the
6 unit team or the warden, depending on what it was.

7 THE COURT: And how would they know they would have
8 to do this?

9 THE WITNESS: There is -- when they arrive, they're
10 given an inmate handbook and in the inmate handbook it lays out
11 all these -- the different procedures, so the administrative
12 remedy procedure, grievance procedure, the disciplinary
13 procedures, things like that.

14 Q In your experience, do inmates have perfect information
15 about how this works?

16 A In my experience not always.

17 Q I'm showing you Government Exhibit 221, what is this?

18 A It's a report of an incident.

19 Q And what was the date of the incident?

20 A The date of the incident was February 5, 2016.

21 Q And what time?

22 A 8:10 a.m.

23 Q And where did this incident occur?

24 A 6-South.

25 Q And what inmates were involved in this incident?

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1 A Latoya Jones and Yesenia Labien (ph.).

2 Q What is the daily assignment record?

3 A That is where someone is -- well, where an officer or
4 someone working custody is assigned on a particular day.

5 Q Showing you Government Exhibit 207. What -- what BOP
6 personnel does this relate to?

7 A C. Martinez.

8 Q And can you tell from -- there are some abbreviations in
9 here I'd just like to go through with you. When this says, for
10 example, on 12/8/2015 quarter number 4. What does that mean?

11 A So that's the date they were assigned and the quarter, so
12 our yearly quarters. And he was assigned as the east
13 activities lieutenant.

14 Q And what building is the east activities lieutenant in
15 charge of?

16 A The east building or the old building.

17 Q And where it says DW-4, what does that mean?

18 A That's the specific shift that they were assigned to.

19 Q And what is the day watch 4 shift?

20 A It's the -- day watch 4, I -- off the top of my head I
21 don't remember what 4 --

22 Q Where is that information indicated?

23 A On the roster, the daily roster. It has the codes for
24 each.

25 MR. RICCO: Is this Exhibit 207?

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1 MS. ARGENTIERI: This is Exhibit 207.

2 RICCO: Okay. Thank you.

3 Q So, for example, looking at Government Exhibit 231 in
4 evidence.

5 A So four is 824.

6 Q And so this is the top of the daily roster?

7 A Yeah. So each number corresponds, so it would be 8 --
8 four is 8 to 4.

9 Q Okay. So in other words, you can read Government Exhibit
10 207, the shifts in connection with the information at the top
11 of the roster?

12 A That is correct.

13 Q And what is the roster?

14 A The roster is on a particular day where each of the
15 positions, the officer positions, who is assigned to that
16 position.

17 Q Within the MDC?

18 A Correct.

19 Q I'd just like to review a couple more abbreviations with
20 you. So if you see M watch 1, what does that refer to?

21 A Morning watch shift one again. So that's midnight to
22 eight.

23 Q And what does DCT mean?

24 A Disturbance control team.

25 Q And what is that?

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- 1 A That is a specialized team within the institution.
- 2 Q What about annual leave?
- 3 A That's vacation time or -- annually.
- 4 Q What about day off?
- 5 A So -- and that is their scheduled day off.
- 6 Q And then on the next page -- what is ART, for example,
7 indicated on page 7 of the document at March 23, 2016?
- 8 A Annual refresher training.
- 9 Q And what is that?
- 10 A It's a week-long training where the institution --
11 everyone in the institution goes through and it's a refresher
12 of all the policies and procedures.
- 13 Q And where is that held?
- 14 A Usually on the seventh floor east building.
- 15 Q And what about firearms training?
- 16 A So as part of annual we all have to go through firearms
17 training, so...
- 18 Q That's what that is?
- 19 A Yep.
- 20 Q What about lieutenant retreat?
- 21 A That's where the lieutenant's get together and review
22 policies and procedures, maybe anything new that's come about.
- 23 Q And there was -- you said that one of those refer to east
24 activities lieutenant, what is the east activities lieutenant
25 responsible for?

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1 A It's my understanding they're in charge of the east
2 building, so they deal with issues and concerns that come up in
3 the east building. The officers have a supervisor to go to in
4 the east building.

5 Q And what about the east internal officer?

6 A My understanding is, is they have same responsibilities,
7 they can move inmates from one place to the other in the east
8 building, so if they're going to visiting or to -- to their job
9 assignments, things like that. Maybe receiving and discharge
10 to leave for the day for court or something like that.

11 Q Okay. I'm showing you Government Exhibit 219. Who --
12 what person do these daily assignment records relate to?

13 A Metzger.

14 Q I'm showing you Government Exhibit 225. What BOP
15 personnel does this document relate to?

16 A D. Smith.

17 Q And this is the daily assignments?

18 A Yes.

19 Q What are time and attendance records?

20 A So they're -- those are our records that we -- that each
21 employee has for their -- so they can get paid, so they have a
22 record of their time.

23 Q And does that keep track of hours worked, but not
24 necessarily assignment?

25 A Yes.

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1 Q Showing you Government Exhibit 206. What employee do
2 these records relate to?

3 A Carlos Martinez.

4 Q And what types of records are these?

5 A These are his time and attendance records.

6 Q So let's just do one day as an example. Okay. So what is
7 regular base pay?

8 A That's just your regular working time.

9 Q What about regular base training?

10 A So that's time that they were in training.

11 Q What about regular base pay with Sunday differential?

12 A So Sunday differential is extra pay that you get for
13 working on Sunday.

14 Q And for the record, we're looking at page -- it's unclear.
15 A page related to time and attendance between December 13th and
16 December 26, 2015?

17 A Yes.

18 Q So what does this record indicate about Martinez's work on
19 December 13th?

20 A That he worked eight hours on December 13th.

21 Q And why does it appear in the regular base with Sunday
22 diff.

23 A Because Sundays are a different pay.

24 Q Okay. And if, for example, he had been absent where would
25 that be reflected?

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- 1 A Down at the bottom where it says annual leave.
- 2 Q And federal holiday?
- 3 A Yep.
- 4 Q I'm sorry, it's crooked. Okay. And so on December 14th
- 5 what does this indicate about what he got paid for?
- 6 A Eight hours of work.
- 7 Q And the regular base and night diff?
- 8 A Yes.
- 9 Q Six?
- 10 A Uh-huh.
- 11 Q Two hours regular pay?
- 12 A Yes.
- 13 Q Okay. I'm showing you Government Exhibit 220-A and B in
- 14 evidence. Do these both relate to Correction's Officer Nunez?
- 15 A Yes.
- 16 Q And so this one looks a little different. So, for
- 17 example, if we took February 27th, what does this document say
- 18 about what Officer Nunez got paid to work?
- 19 A He worked eight hours.
- 20 Q And how can you tell that from this document?
- 21 A Right at the bottom marked time total.
- 22 Q And then what about this -- what can you tell from this
- 23 area of regular base and diff?
- 24 A So five and a half hours was regular and two and a half
- 25 was night.

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1 Q And I sort of have the same question for April 15th and
2 April 16th. What can you tell about what he got paid to work
3 on those days?

4 A Regular five and a half and two and a half for night
5 differential.

6 Q On both of those days?

7 A That's correct.

8 Q And that's Government Exhibit 220-B for the record. And
9 what officer do these records relate to?

10 A D'Anello Smith.

11 Q And would they work the same way as the other records?

12 A Yes. I'm sorry?

13 Q Oh, I'm sorry, Government Exhibit 226 for the record.

14 Okay. And so we just looked at a roster. They're
15 just -- Government Exhibit 229. What is this document?

16 A That is the daily assignment roster for the correction's
17 officer -- or the correctional posts within the institution.

18 Q Okay. And again, can you just remind us what's at this
19 top what it explains.

20 A So that is the times of the different shifts, so --
21 corresponding as you go down the page you'll see different
22 numbers and you can correspondent it to the top for the
23 specific times.

24 Q And what date does this roster relate to?

25 A Sunday December 13, 2015.

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- 1 Q And what does this roster indicate about who worked as
2 east activities lieutenant?
- 3 A So it was Christy (ph.) from midnight to 8. Sorry.
- 4 Q And you're looking at the one --
- 5 A Right.
- 6 Q -- which refers to the top?
- 7 A Correct.
- 8 Q Okay, moving over.
- 9 A Carlos Martinez and that is from 8 to 4.
- 10 Q And?
- 11 A From 4 to midnight it's Metzger.
- 12 Q Government Exhibit 230. What inmate do these -- what
13 inmate, what date do these records relate to?
- 14 A Monday February 8, 2016.
- 15 Q And is this also an MDC roster?
- 16 A Yes.
- 17 Q And what does this document indicate about who worked as
18 east activities lieutenant that day?
- 19 A Metzger from midnight to 8.
- 20 Q And what -- and then?
- 21 A Sorry. From 8 to 4 it was F. Maldonado.
- 22 Q I'm sorry, I can zoom in. It's a little hard to read.
- 23 A Yeah. And then from 4 to midnight it was Metzger.
- 24 Q And what does this indicate about who was working as SIS
25 tech one?

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- 1 A So it was T. Rodriguez.
- 2 Q And what number is there?
- 3 A 4, so from 8 to 4. Thank you.
- 4 Q Finally, Government Exhibit 231. Let me just zoom out for
5 you. What date does this roster relate to?
- 6 A February 9, 2016.
- 7 Q And again, MDC roster?
- 8 A Yes.
- 9 Q And what does this indicate about who was assigned -- who
10 worked as east activities lieutenant in the MDC on that day?
- 11 A So C. Martinez from midnight to 8. F. Maldonado from 8 to
12 4. And Metzger from 4 to midnight.
- 13 Q And what does this indicate about who worked as SIS tech
14 none that day?
- 15 A T. Rodriguez from 8 ro 4.
- 16 Q What are the True Intel records?
- 17 A So it's a record that we use -- it's the log, an
18 electronic log.
- 19 Q And looking at Government Exhibit 208, have you had an
20 opportunity to review this?
- 21 A Yes.
- 22 Q And what unit does this relate to?
- 23 A Six south.
- 24 Q And when you say it's a log, what is it a log of?
- 25 A General things that happen in the unit, so activities that

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1 go on in each of the units.

2 Q Is every activity logged?

3 A No.

4 Q And what does it depend on?

5 A The officer logging the activities.

6 Q So it just depends on the practice of the officer who's
7 logging it?

8 A Yes.

9 Q And so I just want to go over abbreviations with you. So
10 if you look at page -- it's on the bottom right-hand corner.
11 For the record 114 it's called of Government Exhibit 208.

12 So here where it says 11/11 -- where it says enter
13 date, what does that mean?

14 A That's when the officer entered the text.

15 Q And how does that compare to event date, which is the
16 column over to the right?

17 A Right. So it's possible -- so the event is the time that
18 the event actually happened. So they may have logged it later
19 on in the day or in the evening, as it may be. But they could
20 always go back and put the exact time that it actually
21 happened.

22 Q And what is the user?

23 A That's the person who logged it?

24 Q And so, for example, here where it says 11/11 -- I'll go
25 by the event date 12:04 a.m., what does the log indicate

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1 happened?

2 A PREA rounds Lieutenant C. Martinez.

3 Q And what is a PREA round?

4 A It is a round that the lieutenant makes to check to make
5 sure that we're in compliance with PREA.

6 Q And what is PREA?

7 A The Prison Rape Elimination Act.

8 Q And what, if any, training do you get on PREA?

9 A During annual refresher training we get training on
10 different aspects of PREA.

11 Q What are you taught about sexual contact between staff and
12 inmates?

13 A It should never happen.

14 Q And so if the -- if -- the log indicates that Martinez
15 made a PREA round in unit six south at that time?

16 A Yes.

17 Q And just looking at what other types of things are logged,
18 for example, on --

19 THE COURT: What does that mean a PREA log?

20 THE WITNESS: What does it mean? It's --

21 THE COURT: You told us what the training of --

22 THE WITNESS: Sure.

23 THE COURT: -- PREA, but what is a PREA round?

24 THE WITNESS: So it's a round when the lieutenant
25 goes through each housing unit and makes sure that we're in

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1 compliance, so are all the, you know -- showers, you know, have
2 shades on them and things like that. Different -- different
3 aspects in the unit that they need to look at.

4 Q I'm sorry. So on November -- on page 136 at the bottom of
5 Government Exhibit 208, here where it says event date November
6 12, 2015, 10:14 a.m., what does this indicate happened?

7 A So some inmates left the housing to go to clean the
8 lieutenant's office.

9 Q And the name I just covered, is that the name of the
10 inmate in Government Exhibit 2-A?

11 A Yes.

12 Q And are there also incidents in this log where inmates are
13 logged as returning from cleaning, for example, on page 373?

14 A Yes.

15 Q So directing your attention, and I'll just do this for one
16 day, to December 13, 2015, which is reflected at page 483, let
17 me zoom out. What does this indicate happened at 10:10 a.m.?

18 A Lt. Martinez did PREA rounds.

19 Q And then can you see on the next page -- actually, page
20 485 here where it says event 3:15 --

21 A Yes.

22 Q -- on the right? In the first top five columns what does
23 this indicate happened?

24 A So the inmates returned to the housing unit from
25 somewhere.

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- 1 Q Okay. So sometimes inmate movements were logged?
- 2 A Yes.
- 3 Q Including back and forth to visiting?
- 4 A Could be, yes.
- 5 Q Now, are there chaplains at MDC?
- 6 A Yes.
- 7 Q And who do they work for?
- 8 A They work for the Bureau of Prisons.
- 9 Q Who do they report to?
- 10 A The supervisory chaplain.
- 11 Q And then who else?
- 12 A The supervisory chaplain reports to the associate warden.
- 13 Q Not God?
- 14 A I mean if they -- if that's their religious belief.
- 15 Q Okay. Now I want to ask you about a form, SF-95. Are you
- 16 familiar with that form?
- 17 A SF-95, yes.
- 18 Q And what is that?
- 19 A It's a tort claim.
- 20 Q And what does that mean?
- 21 A It's a claim when someone believes that a negligent act of
- 22 a government employee caused them injury. So they fill out
- 23 this form and they submit it with an explanation of their
- 24 injury and the reason for their injury and their claim for
- 25 damages. And they submit it to the agency for the government

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1 employee that committed the negligent act.

2 Q What, if any, time frame does the complainant have to file
3 this form?

4 A Two years from the date of the injury.

5 Q And if they don't file the form, are they barred from
6 filing a suit?

7 A They -- it's a precursor to litigation. So yes, they're
8 not barred. They can file it but, you know, it's subject to a
9 motion to dismiss.

10 Q Okay. And so what is the rule that has to be done within
11 two years?

12 A So they would have to file this form within the two years
13 and then the agency needs to adjudicate the claim.

14 Q Okay. And so you said you work in the legal department,
15 yes?

16 A Yes.

17 Q And what, if any, inmate -- access to inmates do you have?

18 A Not much. I occasionally see them here and there. We're
19 sort of down the end of the hallway and we have -- occasionally
20 they come down and clean the bathrooms and vacuum in our
21 offices.

22 Q And you also walk around the institution?

23 A Occasionally, yes.

24 Q And how long have you been at the MDC?

25 A Since 2009.

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1 Q And in your entire time there, how many female inmates
2 have approached you to report that they have been sexually
3 abused --

4 A None.

5 Q -- by a staff member?

6 A None.

7 Q No further questions.

8 THE COURT: Would you be the one that they would
9 report it to?

10 THE WITNESS: They can report it to any staff member.

11 CROSS-EXAMINATION

12 BY MR. RICCO:

13 Q Good morning, Ms. McFarland.

14 A Good morning.

15 Q One of the -- I just have a few questions. One of the
16 things that you do at MDC is that you assist the lawyers who
17 stumble around, trying to find their way around the Bureau of
18 Prisons, isn't that correct?

19 A That is correct.

20 Q You spend many hours helping the lawyers assist their
21 clients, get services for them, all types of circumstances,
22 right?

23 A Sure.

24 Q And we've had the opportunity to deal with each other over
25 the years, isn't that correct?

- 1 A Yes.
- 2 Q Okay. Just a couple of questions. I want to go back to
- 3 the sort of chaplain remark that was made. The chaplains are
- 4 at MDC for the spiritual and religious benefits of the
- 5 defendants (sic), isn't that correct?
- 6 A Of the --
- 7 Q Of the --
- 8 A -- inmates.
- 9 Q -- detainees, I'm sorry.
- 10 A Yes.
- 11 Q Okay. And they don't report to the lieutenants, do they?
- 12 A Not -- not in their chain of command.
- 13 Q Right. Their chain of command goes directly up to the
- 14 associate warden, isn't that correct?
- 15 A The supervisory chaplain to the associate warden.
- 16 Q Okay. Also, you were asked a question as to whether or
- 17 not any female has approached you since 2009 about an
- 18 allegation of having improper sexual contact with staff,
- 19 correct?
- 20 A That is correct.
- 21 Q And you said no.
- 22 A Correct.
- 23 Q But there had been allegations of sexual contact with
- 24 staff since 2009 at that jail.
- 25 A Yes.

1 Q And I think you were telling us that if a person has any
2 type of tort claim, assault, injury, slip and fall, any, they
3 have to file what we call a notice of claim.

4 A That is correct.

5 Q You also told us going through the charts, that the charts
6 show that their lieutenants do pre-rounds, correct?

7 A Yes.

8 Q And are you aware if the lieutenant is required to do one
9 pre-round per shift?

10 A I'm not sure.

11 Q Okay. Is it fair to say that most of the activity that we
12 see the officers involved with are subject to, or as a result
13 of Bureau of Prisons rule or regulation?

14 A I'm not sure I understand the question.

15 Q In other words, we see people signing inmates out of a
16 unit. That is as a result of a rule or regulation, isn't that
17 correct?

18 A A lot of what we do is governed by our policies, yes.

19 Q That's my question.

20 A Yeah.

21 Q Right. Okay. What does an inmate do -- what options does
22 an inmate or detainee have if they want to file a complaint
23 against a staff person and they're apprehensive about
24 repercussions? Is there anything set up for that kind of
25 situation?

1 A Yes.

2 Q Can you explain to the jury what that would be?

3 A So if they're concerned about the institution itself, they
4 can file -- so they can file what's called a "sensitive BP-10"
5 to the region, which is an administrative grievance. A BP-10
6 is our colloquial term for an administrative remedy to the
7 regional office in Philadelphia. So they can call -- file
8 what's called a sensitive administrative grievance to the
9 regional office in Philadelphia, so that way it doesn't have to
10 go through the institution itself.

11 Q Okay. And that mechanism is set up so that an inmate who
12 feels as though something has happened to them has an outlet
13 outside of the staff that they want to complain about, so to
14 speak.

15 A Yes.

16 Q And is that a part of this inmate handbook? Is that how
17 inmates are informed about that?

18 A I believe so, yes.

19 Q Okay. Now you were asked, and I just want to clarify
20 about the inmate handbook, I think you were asked do the
21 inmates or the detainees have perfect information and you said
22 that your experience is that they don't have perfect
23 information, isn't that correct?

24 A Yes.

25 Q There are very few people who we have employed at BOP who

1 have what we would call perfect information, isn't that
2 correct?

3 A Yes.

4 Q I want to ask a question about -- can we have 207? I
5 think that's the one which are the daily access.

6 While we're getting that, I wanted to ask a question, what
7 is the percentage of inmates or detainees that are Spanish-
8 speaking at the MDC?

9 A I have no idea.

10 Q Well it's fair to say that there is a population of
11 inmates at MDC that don't speak English, right?

12 A Yes.

13 Q And what do those -- do non-speaking detainees, how are
14 they able to express grievances or to express themselves to
15 staff?

16 A So we have a lot of staff who speak different languages.
17 So Spanish -- you spoke about Spanish, we have a lot of people
18 who speak Spanish. And so they could speak to those staff
19 members.

20 Q Yes.

21 A I've also seen where they write the grievance in Spanish
22 and we could have it translated.

23 Q Okay. All right. Thank you. Now we were just looking at
24 207 and I'm going to put it on the screen and I think you told
25 us that's a daily assignment sheet for Lt. Martinez, right?

1 A Yes.

2 Q And if we go back to -- going several pages, this tracks
3 this document will track of the days that he worked during the
4 time period that's covered by this document.

5 A Yes.

6 Q Okay. If we go back and take a look at -- I think you
7 could see my finger at the bottom, April 30th, 2016, was he
8 working that day?

9 A It says that he was on annual leave.

10 Q How about the 29th?

11 A Also annual leave.

12 Q We go all the way down to April 16th, from the 28th to the
13 16th, is Lt. Martinez present in the facility?

14 A The only day that I wouldn't be able to say for sure would
15 be the 21st of April which is DCT. I don't know if the
16 training was actually at the institution or if it was outside
17 but --

18 Q Okay. And so, sometimes training is in the facility,
19 sometimes it's outside.

20 A Correct.

21 Q But one thing for sure, we can look at this document and
22 we can sort of figure out what days he was working during the
23 month of April 2016, correct?

24 A Yes.

25 Q All right. Okay. Oh, a lot of the movement of inmates

McFarland - Cross - Ricco

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1 and interaction with inmates is recorded, isn't that correct?

2 A We have cameras. So, yes, a lot of it is on camera.

3 Q Okay. And then we also have entries. So, for example, I
4 think you showed us that on a particular unit, when the inmates
5 were taken from the floor or escorted from the floor, somebody
6 logged that in somewhere.

7 A Yes.

8 Q Okay. Now the institution keeps a count, isn't that
9 correct?

10 A Yes.

11 Q And tell the jury what the count is?

12 A So several times throughout the day, we count all of the
13 inmates in the institution to make sure that they're all
14 present and every day -- so it's a couple of times a day
15 depending on the day of the week, it happens throughout the day
16 and evening.

17 Q Okay. And so when we see inmates being logged out to go
18 to visiting rooms or to work assignments, it's pretty much to
19 keep track of where they are, right?

20 A That's part of it, yes.

21 Q Okay. I have no further questions. Thank you very much.
22 Oh, no, hold on. I do.

23 I want to show you what is marked as 35-M-3 for
24 identification -- 3500-M-3.

25 A Uh-hum.

McFarland - Redirect - Argentieri

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1 Q Are you familiar -- sorry -- are you familiar with the
2 records that are kept at MCC?

3 A This record itself is a SENTRY record, so it's the same
4 across the Bureau of Prisons.

5 Q Okay. And it indicates that a particular inmate had
6 stolen property in their possession, right?

7 A Yes.

8 Q And that that inmate lost some benefits for having a
9 stolen property.

10 A Yes.

11 Q What would that be, stolen property, or you can't tell
12 from that document?

13 A It's unclear from this one what the particular stolen
14 property was.

15 Q All right. Can you tell from the -- hold on for one
16 second. can you tell from the register number at the top of
17 that document, would we be able to relate that to another -- to
18 determine who that person is?

19 A Yes.

20 Q And did you see that same register number in connection
21 with Exhibit, I think, 200?

22 A If that was one of the first documents that were shown to
23 me.

24 Q I think it was but let's -- I'm going to show you what's
25 in evidence as 200.

McFarland - Redirect - Argentieri

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1 A Yes.

2 Q So that would be the same individual who was in
3 Government's Exhibit 200, right?

4 A Yes.

5 Q And so that person had stolen property in their cell at
6 the MCC.

7 A Yes.

8 Q Okay. No further questions. Thank you.

9 MS. ARGENTIERI: Judge, can I have just one second?

10 Sorry.

11 (Pause)

12 REDIRECT EXAMINATION

13 BY MS. ARGENTIERI:

14 Q Just a couple of questions. The BP-10 form that you
15 referenced, how would an inmate submit that?

16 A He --

17 THE COURT: Tell us again what a BP form is.

18 Q Can you tell us again what a BP-10 is?

19 A So a BP-10 is the regional administrative grievance. So
20 it's the form that an inmate would submit to the regional
21 office, in our region, it's Philadelphia, to address any
22 complaints that they had about the institution or the BOP.

23 Q How would that get submitted?

24 A They send it directly to the regional office in
25 Philadelphia.

McFarland - Redirect - Argentieri

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1 THE COURT: I didn't hear the first part.

2 Q How?

3 A Sorry, they send it directly to the regional office in
4 Philadelphia.

5 Q How?

6 A Through the mail.

7 Q You said that -- you were asked a little bit about cameras
8 in the jail. How long is camera footage kept for?

9 A It varies depending on the camera but I think the minimum
10 is fourteen days but it depends -- it's a loop, so it rewrites
11 over itself.

12 Q Now I asked you some questions about Unit 6-South. Is
13 there a phone that connects directly from Unit 6-South to the
14 United States Attorney's Office?

15 A To the U.S. Attorney's -- no.

16 Q And just going back to 3500-M-3, which you were shown by
17 defense counsel.

18 A Yes.

19 Q It referenced possessing stolen property but you said you
20 don't know what that is.

21 A I don't know what the specific property was.

22 Q And could it have been just removing property from the rec
23 room that they weren't supposed to?

24 A Could be.

25 Q And just so it's clear, the discipline that the inmate

McFarland - Redirect - Argentieri

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1 that was referenced in that form received, do you recall what
2 it was?

3 A I believe if I -- it was impounding personal property and
4 -- I forget what the other one was.

5 Q Was it impounding personal property for one month and two
6 months loss of commissary?

7 A Yes.

8 Q It's a pretty minor discipline.

9 A Yes.

10 Q No further questions.

11 MR. RICCO: No questions, your Honor.

12 THE COURT: Ladies and gentlemen, we'll take a short
13 recess.

14 THE CLERK: All rise.

15 (Jury exits courtroom.)
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Sidebar

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1 (Discussion held at sidebar.)

2 THE COURT: Could I ask you one -- I have a couple of
3 questions.

4 THE CLERK: Please be seated.

5 THE COURT: Why is it that a prisoner who said she
6 was raped is placed in the SHU, as opposed to some other place,
7 where she would -- since the purpose of the placement is simply
8 to isolate her? Why is it that this person would be placed in
9 the same place you house people to punish them?

10 THE WITNESS: So the immediate need to make sure that
11 they're in a safe place.

12 THE COURT: What's the immediate need? I could
13 understand 24 hours but did it ever occur to anybody that
14 essentially putting them in a place where you put people to
15 punish them for an indefinite period of time might discourage
16 people from making complaints.

17 THE WITNESS: Sure. And I think in the recent time
18 period, our practice has become to move them to potentially
19 another institution or something like that, rather than keeping
20 them in the SHU for an extended period of time.

21 THE COURT: And when did that begin?

22 THE WITNESS: I believe under the Prison Rape
23 Elimination Act, they suggested that, you know, you should not
24 use SHU for accused and, you know -- for the people that are
25 making the allegation.

Sidebar

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1 THE COURT: And when did that take effect?

2 THE WITNESS: Gosh. A couple of years, I'm not a
3 hundred percent sure of the exact year.

4 THE COURT: Was it in effect during the time period
5 here?

6 THE WITNESS: I don't know. I don't -- I couldn't
7 tell you.

8 THE COURT: And under the Federal Torts Claim Act, as
9 I read it, are not limited solely to negligence claims.

10 THE WITNESS: So it's not limited to negligence. So
11 there could be intentional misconduct by the government
12 employee, as well.

13 THE COURT: It could be rape.

14 THE WITNESS: It could be, yes.

15 THE COURT: Okay. I don't know how that came out,
16 whether you said that.

17 THE WITNESS: I think I --

18 THE COURT: You said negligence.

19 THE WITNESS: I did say negligence, yes.

20 THE COURT: Which is not accurate.

21 THE WITNESS: So it's a tortious act on the -- by
22 the --

23 THE COURT: Oh, there are some tortious acts that are
24 -- I mean, I just quickly looked at the statute.

25 THE WITNESS: Yeah, and there are --

Sidebar

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1 THE COURT: There are some tortious acts that are
2 excluded but I don't see murder, rape, as being crimes that are
3 excluded.

4 THE WITNESS: Correct.

5 THE COURT: You could take a -- I have the statute.

6 THE WITNESS: Yeah. No, you're correct, yeah. And I
7 think I misspoke that.

8 THE COURT: Okay. I don't have anymore questions.

9 MS. ARGENTIERI: Thank you.

10 THE WITNESS: Thank you.

11 (Witness excused)

12 THE COURT: I don't know, who is your next witness?

13 MS. ARGENTIERI: Lieutenant Metzger.

14 THE COURT: And how long?

15 MS. ARGENTIERI: I would say 20 minutes on direct.

16 Oh, I am sorry. I would say 20 minutes on direct.

17 THE COURT: Okay. I wanted to say that I -- I don't
18 want to get into any arguments now but I am contemplating
19 striking certain testimony that was given when you went beyond
20 what you said you wanted to ask about consensual sex and on
21 page 703, from lines 7 to line 13 -- well, we might as well go
22 to line 17 --

23 MS. ARGENTIERI: I'm sorry, Judge. You're striking
24 line 703 --

25 THE COURT: I'm going to.

Sidebar

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1 MS. ARGENTIERI: Line 7?

2 THE COURT: Line 7.

3 MS. ARGENTIERI: But, Judge, I believe that was
4 within the scope of her prior testimony that it was his idea
5 that they use the office that way because of the camera. I
6 thought that was --

7 THE COURT: No, no, you weren't happy with that.

8 MS. ARGENTIERI: Judge, I think that the witness
9 testimony came in on Friday --

10 THE COURT: No, in fact, Mr. Ricco objected and it
11 says -- I said, "It seems to me we're going beyond to what you
12 just said," and you said, "Understood, Judge." And you would
13 have kept going had he not objected --

14 MS. ARGENTIERI: Judge, just --

15 THE COURT: -- to more of the stuff that you wanted
16 to elicit.

17 MS. ARGENTIERI: Judge, I take from your tone that
18 this was upsetting but the defendant elicited after we had that
19 argument at sidebar --

20 THE COURT: No, he elicited -- the only thing he
21 elicited was that they had consensual sex at his apartment.

22 MS. ARGENTIERI: And the job. If you continue
23 reading he said -- I said we met -- the question:

24 "Question: You got together and you had sexual
25 contact with each other, okay, at his apartment, right?

Sidebar

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1 "Answer: Yes."

2 "Question: And the two of you also had sexual
3 contact at the job?

4 "Answer: Correct."

5 THE COURT: Where is that?

6 MS. ARGENTIERI: I'm sorry, Judge. It's at 704,
7 lines 14 and 15.

8 THE COURT: Yeah, but he was just trying to deal with
9 your questions.

10 MR. RICCO: That's exactly right, Judge.

11 THE COURT: He was just trying -- he would not have
12 asked those questions on his own. That was his way of trying
13 to deal with the questions that you were asking.

14 MS. ARGENTIERI: Judge?

15 THE COURT: If you look at what you asked me, you
16 do --

17 MS. ARGENTIERI: Judge, at the sidebar, I was arguing
18 that we should be able to get into the fact that they met for
19 the purpose of having sex within the MDC, as well as at his
20 apartment because just prior to that, Mr. Ricco had elicited
21 that they had consensual sex at the apartment.

22 THE COURT: Right.

23 MS. ARGENTIERI: Which left a misleading impression
24 in the jury's mind --

25 THE COURT: Right.

Sidebar

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1 MS. ARGENTIERI: -- that was the only --

2 THE COURT: And you got that. So, I think Mr. Ricco
3 was just suggested that they met at his apartment, I am reading
4 from 702.

5 MS. ARGENTIERI: Okay.

6 THE COURT: Which they did. And they also met within
7 the MDC. So hasn't he opened the door to getting me in that
8 they also met at the MDC? He's making it sound like that's the
9 only place that they met and I said okay.

10 MS. ARGENTIERI: Okay.

11 THE COURT: That was not -- you went beyond that
12 particular request and who knows how far you would have gone if
13 he hadn't objected.

14 MS. ARGENTIERI: Judge, I didn't think at that point
15 that I was going on beyond your ruling and as soon as you
16 stopped me, I stopped.

17 THE COURT: Yeah, I should hope so.

18 MS. ARGENTIERI: Yes, okay. So you're just striking
19 line 7, so I have that correct.

20 THE COURT: I'm striking the lines that I told you
21 that I would strike, from line 7 until the end of the -- until
22 17 because it seems to me line 14 has his objection and line 15
23 says, "It seems to me we're going beyond what you've just
24 said." And you said, Understood." I don't think we need that
25 either.

Sidebar

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1 MS. ARGENTIERI: Judge, as to the part about the fact
2 that he had the cameras up --

3 THE COURT: That I didn't -- I told you that you
4 could have. I let you have that.

5 MS. ARGENTIERI: I know, but so I am not sure why it
6 has to be struck from page 703. It was just a restatement of
7 the testimony that came in earlier.

8 THE COURT: I'm not striking -- I'm not striking the
9 questions on -- I'm not striking, 3, 4, 5 and 6. I'm leaving
10 them in.

11 MS. ARGENTIERI: Okay. You're striking from 7 all
12 the way to 13.

13 THE COURT: Right.

14 MS. ARGENTIERI: Okay. Understood.

15 THE COURT: I may give some curative instruction but
16 it's hard to -- not curative in the sense that -- it's hard to
17 know whether to call the attention of the jury to what I am
18 striking or just eliminating it from whatever goes into the
19 jury room, so that it's not there. I leave that to Mr. Ricco.
20 You'll tell me what you want to do.

21 And I also may want to give an instruction that says
22 something like the fact that they had consensual sex in the
23 prison, you should not draw any inference from that, that he
24 necessarily had forcible sex there. I'm just saying it off the
25 top of my head but that's roughly -- I could tell them why it

1 was admitted but I leave that -- sometimes telling juries why
2 things were admitted compounds the problem. So I would simply
3 give -- I leave this all to Mr. Ricco. He indicated that he
4 wanted such an instruction earlier when -- I forget where I
5 read it but he said he might want it because that's precisely
6 what Judge Cogan indicated, he would allow to be admitted.
7 Essentially what's happened is is that Judge Cogan's in limine
8 ruling has been followed and he never intended for you to go
9 beyond that in a way that you suggested. That you wanted to go
10 into exactly how the sex acts were done.

11 MS. ARGENTIERI: I expected the witness just to say
12 that they had sexual contact there, Judge.

13 THE COURT: Well, you said more than that.

14 MS. ARGENTIERI: I just said and that --

15 THE COURT: No, when we were arguing about it, when
16 you got up to argue, you wanted to go into the details of
17 exactly how it was done.

18 MS. ARGENTIERI: That's correct, Judge, that was my
19 initial argument.

20 THE COURT: I know and Judge Cogan didn't intend for
21 that, as I read his opinion.

22 MS. ARGENTIERI: Okay.

23 THE COURT: Okay, let's go.

24 MS. ARGENTIERI: Judge, I just want to make sure the
25 witness is outside. I'll bring her in.

Sidebar

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1 THE COURT: Obviously.
2 (Discussion concludes at sidebar.)

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1 MS. ARGENTIERI: The government calls Veronica
2 Metzger.

3 THE COURT: Is this your last witness?

4 MS. ARGENTIERI: We have one witness after this,
5 Judge.

6 THE COURT: How long?

7 (Jury enters courtroom.)

8 THE CLERK: Be seated.

9 VERONICA METZGER, GOVERNMENT'S WITNESS, SWORN
10 DIRECT EXAMINATION

11 BY MS. ARGENTIERI:

12 Q Good afternoon. I'm over here. Straight ahead. Right
13 here. Okay.

14 Can you state and spell your name for the record?

15 A Veronica L. Metzger, V-E-R-O-N-I-C-A M-E-T-Z-G-E-R.

16 Q What do you do for a living?

17 A I'm a supervisory correction officer, GS-9 lieutenant.

18 Q Where?

19 A MDC-Brooklyn.

20 Q And who do you work for? What agency?

21 A The Federal Bureau of Prisons.

22 Q And how long have you worked for the Bureau of Prisons?

23 A My EOD is 10/3/04.

24 Q What is EOD?

25 A Entrance date, start date.

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1 Q Entry On Duty?

2 A Yes.

3 Q And what is your title there?

4 A Supervisory correction officer, which is lieutenant, GS-9
5 lieutenant.

6 Q What inmates are housed at the MDC? What types of
7 inmates?

8 A All types, administrative, all levels, pretrial, A-hold,
9 some designated inmates --

10 Q Are they --

11 A -- male and female.

12 Q -- are they state or federal?

13 A Federal.

14 Q And are they pre-trial or post-trial?

15 A Pre-trial.

16 Q And post -- and sentenced?

17 A Some sentenced.

18 Q And you said both men and women?

19 A Yes.

20 Q How long have you been a lieutenant?

21 A I've been a lieutenant since 2013, approximately four
22 years, almost five.

23 Q What are your duties and responsibilities as a lieutenant
24 at the Bureau of Prisons?

25 A As a lieutenant, you maintain the safety and security of

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1 the institution.

2 THE COURT: Can you sit closer to the microphone or
3 maybe move it up.

4 THE WITNESS: Oh, I am sorry.

5 THE COURT: Okay, thank you.

6 A As a lieutenant, you maintain the safety and security of
7 the institution. Per shift, you manage any emergency
8 situations. You guide staff through these situations. You
9 investigate any prohibited acts that inmates commit, inmate
10 fights, assaults against other inmates, staff. You make
11 rounds. You handle visiting and staffing issues. You're
12 responsible for maintaining the daily staffing assignment
13 roster.

14 Q And did you receive any specific training to be a
15 lieutenant?

16 A Yes, you do.

17 Q What training?

18 A You have on the job training, as well as training in the
19 training center in Colorado.

20 Q And how long is the training?

21 A Training is two weeks.

22 Q And based upon your 13 years of experience as an officer
23 and a lieutenant at the MDC, what is the most important
24 responsibility you have as a corrections officer?

25 A To maintain their safety.

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- 1 Q I'm sorry, to maintain?
- 2 A Their safety.
- 3 Q Whose safety?
- 4 A The safety for staff and inmates.
- 5 Q What is PREA?
- 6 A PREA is -- oh, my gosh, I'm sorry. I'm a little nervous.
- 7 Q That's okay.
- 8 A Sorry.
- 9 Q If you don't remember what it stands for, what does it --
- 10 what are the concepts?
- 11 A The concept is you protect the inmate from being assaulted
- 12 in any type of way.
- 13 Q And assaulted by who?
- 14 A Anyone; staff, other inmates.
- 15 Q And what are your obligations if you learn about a PREA
- 16 complaint?
- 17 A I'm sorry, could you repeat that?
- 18 Q What do you have to do if you learn about a PREA
- 19 complaint?
- 20 A You have to interview the inmate, separate the other
- 21 individual. You have to make sure they're medically evaluated,
- 22 separated from the unit or area that they allege that it
- 23 occurred.
- 24 Q And at the MDC, if a female inmate is involved in a PREA
- 25 complaint, what happens to them?

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1 A Normally, they're placed in special housing but usually
2 you're not supposed to place them in special housing. If it
3 happens with a male inmate, you -- we have the ability to place
4 them on several other units. With the females, there's only
5 two units. So oftentimes, we place them in special housing.

6 Q And what is the special housing unit?

7 A It's the SHU.

8 Q And in the SHU, what access -- first of all, who works the
9 SHU? What guards?

10 A You have staff that's assigned there and officers that
11 rotate into SHU.

12 Q And they work the rest of the facility, as well?

13 A They can, yes.

14 Q And what access to inmates in SHU have to phone calls?

15 A They have access monthly.

16 Q How many calls a month?

17 A One call a month.

18 Q What about visits?

19 A Visits. If they're not -- if their visits have not been
20 taken away, they haven't been sanctioned, they visit according
21 with their floor. Like if their floor visits every week, they
22 will visit every week as well, if they're on administrative
23 detention.

24 Q What is the hierarchy at the MDC? Who runs the facility?

25 A The level is officers, lieutenant, captain, AW, warden.

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1 Q And that was going up in the hierarchy?

2 A That's a level up --

3 Q Yes.

4 A -- to the top.

5 Q And what is an AW?

6 A Associate warden.

7 Q And under everyone you just listed, are the inmates,
8 right?

9 A Yes.

10 Q Okay. How many buildings make up the MDC?

11 A Two.

12 Q And how are they referred to?

13 A East and west.

14 Q Now, directing your attention to the fall of 2015, where
15 were female inmates housed within the MDC?

16 A They were housed on the sixth floor, 6-North and 6-South.

17 Q I'm going to show you Government Exhibit 104.

18 MS. ARGENTIERI: I'm showing the witness what's in
19 evidence -- okay.

20 Q So starting with Government Exhibit 104-A, what is this?

21 A That's the rows in the unit. That's the rows of unit 6-L.

22 Q And when you say "the rows," what are they rows of?

23 A The inmate living rows.

24 Q Like the beds?

25 A Yes.

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- 1 Q And have you previously reviewed these pictures?
- 2 A I'm sorry?
- 3 Q Have you previously reviewed these photos?
- 4 A I've seen them, yes.
- 5 Q Okay. And Government Exhibit 104-B, what is this a
- 6 picture of?
- 7 A It's another picture of the rows and housing units.
- 8 Q Okay. It's the common area.
- 9 A Right. Over to the right of the common area?
- 10 Q Correct.
- 11 A Indicating the table?
- 12 A Correct.
- 13 Q Government Exhibit 104-C, what is this?
- 14 A It's a whole picture of the common area of Unit 6-L.
- 15 Q And where in this photo, if anywhere, is the unit office?
- 16 A It's to your far left.
- 17 Q You can actually touch the --
- 18 A Can I --
- 19 Q -- screen.
- 20 A It's near the ice machine, to the far left.
- 21 Q So to the right of this ice machine?
- 22 A Correct.
- 23 Q I'm showing you Government Exhibit 104-D, what is that a
- 24 photo of?
- 25 A That's a photo of the sink, laundry area, the shower --

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1 the bathroom stalls and the shower.

2 Q Okay. And does Unit 6-L have cameras?

3 A Yes, it does.

4 Q And what, if any, cameras show the outer area of the
5 bathrooms?

6 A Which cameras show it?

7 Q Well, is there a camera that shows the outer area of the
8 bathrooms?

9 A It would be -- there's one view from the common area that
10 just shows the front where you would see the stall.

11 Q You can see the outside of the stalls?

12 A Just the outside. I believe it only has a view of the
13 bathroom stalls.

14 Q And between 2015 and 2016, what jobs did female inmates
15 hold at the MDC? What types of jobs?

16 A We had cleaning jobs, food service, laundry.

17 Q And what, if any, obligation did sentenced inmates have to
18 work?

19 A They were required to work, if you're sentenced.

20 Q And who would decide what job they would do?

21 A Our unit team.

22 Q It's --

23 A In combination with -- it's made up of the unit manager,
24 case manager, unit counselor.

25 Q And what could happen to an inmate, if anything, if they

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1 refused to do their job?

2 A They would just -- you'd write them up for an incident
3 report. They would receive an incident report if they refused
4 to work.

5 Q Now beginning in 2015 -- and as a result of that incident
6 report, could they face discipline?

7 A Yes.

8 Q And beginning in 2015, what if any responsibility did you
9 have for female inmates at the MDC?

10 A I worked in that side of the building. I was the east
11 activities lieutenant. I worked in that side of the building,
12 the east building, on evening watch.

13 Q And do you recall like between October 2015 and spring of
14 2016, generally what shift you worked?

15 A I worked evening watch shift 7, which is 4 p.m. to 12 a.m.

16 Q And what days?

17 A My days off are Wednesday and Thursday. So I worked
18 Friday through Tuesday.

19 Q And at that time, was Carlos Martinez also assigned as
20 east activities lieutenant?

21 A Yes.

22 Q And do you recall what shift was he generally working?

23 A He was on a relief post, a relief post of all the east
24 side shifts, I believe.

25 Q And can you -- I know it's complicated, can you explain

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1 what shifts that meant as a general matter you work?

2 A He would work a Friday evening watch, Saturday, Sunday day
3 watch. Then come back for morning watch, Monday and Tuesday.

4 Q Now as east activities lieutenant, what were your duties
5 and responsibilities?

6 A At that time, we had east SHU. You had the cadre unit
7 available. You had the two female floors. There was inmate
8 visiting at that time. Responsible for any activities in east
9 SHU, any incidents in the east building.

10 Q Okay. And east SHU is the SHU for the inmates held in the
11 east building?

12 A Correct.

13 Q And where did you work out when you were assigned as east
14 activities lieutenant?

15 A East second floor, my office was.

16 Q Now what is the east -- you said the second floor office?

17 A That's where the lieutenant's office is.

18 Q And what is the east activities internal officer?

19 A It's an officer that's assigned to the east building that
20 handles all movement. He will move inmates back and forth.
21 They respond to emergencies with the lieutenant.

22 Q Is it fair to say the internal officer moves around the
23 building a lot?

24 A Yes.

25 Q And as the east activities lieutenant, how are you

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1 involved in directing the east activities unit officer -- I'm
2 sorry, east activities internal officer?

3 A If you need anything, if you need them to pick up someone,
4 if there's an emergencies, if you need them to take pictures.
5 At times we do other things like urine analysis. There's a lot
6 of other different things that we do that the internal may be
7 involved.

8 Q when you were east activities lieutenant, what if any
9 practice did you have with regard to cleaning?

10 A Had an inmate detail. While I was assigned to create an
11 inmate detail and we created one along with unit team of
12 approximately 20 females that were broken down to work in
13 several shifts. We're responsible for that and cleaning up the
14 east building.

15 Q And what areas had to be cleaned?

16 A They did the east and west V.R., first floor link, the
17 hallway from control center back, elevators; the whole area,
18 freight.

19 Q Okay. So you kind of said a lot there. East V.R., west
20 V.R.

21 A Uh-hum.

22 Q Can you tell the jurors what those stand for?

23 A That's the visiting rooms in the east building and the
24 west building.

25 Q And what is the link?

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1 A The link is the corridor that adjoins both buildings that
2 you would travel through.

3 Q And inmates were responsible for cleaning that, as well?

4 A Yes.

5 Q And then you say the hallway to the control center, where
6 was that?

7 A That's when you come into the institution, when you're
8 coming -- in the east building, when you're coming back, going
9 towards the elevators going upstairs to the second floor.

10 Q And what, if any, practice did you have with regard to
11 cleaning the lieutenant's office?

12 A That was done daily.

13 Q By who?

14 A Inmates assigned there.

15 Q And you said that was done daily when you were there?

16 A Yes.

17 Q Meaning when you were assigned as east activities
18 lieutenant.

19 A When I was assigned, as far as I know, I brought them
20 down.

21 Q Okay. And who was the inmate that you had clean the
22 lieutenant's office? Was it one person or more than one
23 person?

24 A It was one. I had one inmate assignment.

25 Q Okay. And do you recall her name as you sit here today?

Metzger - Direct - Argentieri

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1 A Yes, Inmate West.

2 Q Okay. And what was your practice with regard to cleaning
3 supplies?

4 A They were kept in two cabinets, two different cabinets.

5 Q What as the difference between the two cabinets?

6 A One cabinet had institutional supplies. One cabinet had
7 supplies that were my own.

8 Q And what was your practice with regard to the cabinet that
9 had your supplies in it?

10 A It had a lock on it.

11 Q And who had the key to that lock?

12 A I did.

13 Q Okay. Where else in the unit did you keep cleaning
14 supplies?

15 A There were supplies behind the desk in two bags that
16 separated the bags that needed to go to the west building and
17 the ones that needed to stay in the east building.

18 Q And who put together those two bags?

19 A The second floor orderly.

20 Q Okay. And everything we've been talking about, these are
21 supplies that are kept in the lieutenant's office?

22 A Yes.

23 Q Okay. And when you had your detail clean, what if any
24 practice did you have at the time? Would you document it in
25 any way?

Metzger - Direct - Argentieri

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1 A Yes.

2 Q How?

3 A Sent out emails, B.R.O. lieutenant's safety --

4 Q And --

5 A -- just to let them know what areas were cleaned.

6 Q And who -- now did you send out that email every time?

7 A I would say maybe 80 percent of the time, 85 percent of
8 the time.

9 Q And you said you sent those emails to B.R.O. lieutenants.

10 A Uh-hum.

11 Q At that time, would that email have gone to Lt. Martinez,
12 Lt. Carlos Martinez?

13 A It would have, yes.

14 Q And what was your general practice when you had West down
15 -- West brought down to cleaning the lieutenant's area? How
16 would that happen?

17 A The internal would bring them down or if they weren't
18 available, making movements, I would go myself and bring them
19 down.

20 Q And what was your practice with regard to the internal
21 officer staying in the office when you were there?

22 A The internal didn't stay when I was there. I was there by
23 myself.

24 MS. ARGENTIERI: I'm going to show the witness some
25 photos that are in evidence. Government Exhibit 101. And we

Metzger - Direct - Argentieri

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1 can show everyone, actually.

2 Q Do you recognize what's in this photo?

3 A Yes.

4 Q And what is this, the elevator near?

5 A That's the elevator to the second floor going into the 2-
6 Romeo, which is the Romeo door going towards the lieutenant's
7 office.

8 Q And Government Exhibit 101-B?

9 A That's the Romeo door, the actual door.

10 Q Going towards the lieutenant's office?

11 A Yes.

12 Q 101-C?

13 A The door open.

14 THE COURT: Is there any reason we're going over this
15 again?

16 MS. ARGENTIERI: I'm sorry, Judge?

17 THE COURT: Haven't we been through this?

18 MS. ARGENTIERI: I don't think so and I am going to
19 get to pictures inside the lieutenant's office that we
20 definitely haven't been through.

21 THE COURT: Okay.

22 Q And I'm sorry, I guess -- 101-C, we're looking at what?

23 A That's the door open.

24 Q Okay. And 101-D, where are we facing?

25 A That you're going into the door, about to go into the

Metzger - Direct - Argentieri

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1 office area, that's the sally port.

2 Q 101-E?

3 A That's the second door, going into the lieutenant's office
4 closed.

5 Q And can you see through this window? Like what is this?

6 A That's the male bathroom.

7 Q And on which side is the lieutenant's office or where is
8 it?

9 A It's on this side. It's on the other side.

10 Q Indicating the left side.

11 A Yes.

12 Q Showing you Government's Exhibit 102-A, what does this
13 show?

14 A That's the corridor before you go into the office.

15 Q And which if any door is the office?

16 A Point to it.

17 Q Sure. And so there are two marked areas now, indicating -
18 -

19 A I'm sorry.

20 Q -- the second door from the left?

21 A Yes.

22 Q So it is the second door from the left for the record?

23 A Yes.

24 Q And that's the lieutenant's office?

25 A Correct.

Metzger - Direct - Argentieri

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1 Q And what is this office next to it?

2 A It's the chaplain's office.

3 Q 102-C, what is that?

4 A That's the outside of the chaplain's office.

5 THE COURT: Has 102-C been marked into evidence?

6 MS. ARGENTIERI: I don't think so, Judge. That's
7 what -- my paralegal was actually just correcting me. Can I
8 show them to the witness?

9 THE COURT: Yes.

10 MS. ARGENTIERI: Im' sorry, Judge.

11 Q So I am going to show you Government's Exhibit 102-C, 102-
12 E, 102-F and 102-G. Have you reviewed these previously today -
13 - before today?

14 A Yes.

15 Q And what are these photos of?

16 A The downstairs second floor area, outside the office.
17 That's the suicide watch area.

18 Q Are they fair and accurate?

19 A Yes.

20 MS. ARGENTIERI: I offer them.

21 MR. RICCO: That's without objection, your Honor.

22 THE COURT: They're admitted.

23 (Government's Exhibits 102-E, F and G, received into evidence,
24 as of today's date)

25 MS. ARGENTIERI: Judge, we're also going to move 101-

Metzger - Direct - Argentieri

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1 E.

2 Q Do you recognize this photo?

3 A Yes.

4 MS. ARGENTIERI: I offer it.

5 MR. RICCO: Without objection, your Honor.

6 THE COURT: It's admitted.

7 (Government's Exhibit 101-E, received into evidence, as of
8 today's date)

9 Q 102-b, what is this a photo of?

10 A That's outside the lieutenant's office in the sally port
11 in front of two bathrooms.

12 Q Those are the two bathrooms?

13 A Correct.

14 Q Now, 102-E, what is that a photo of?

15 A That's the hallway going down to the suicide watch area.

16 Q All right. And were there cameras that captured these
17 hallways?

18 A This particular view, yes.

19 Q And then 102-F, is this a view just looking back at the
20 lieutenant's office?

21 A Yes, it is.

22 Q And 102-G, what is that?

23 A That's a longer view, going back -- looking back towards
24 the lieutenant's office from the suicide watch area.

25 Q Now I am going to show you some more photos. Government

Metzger - Direct - Argentieri

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1 103-A, what is that?

2 A That's the lieutenant's office, the door open.

3 Q And what is this that I am pointing to on the left? It's
4 a brown piece of furniture.

5 A That's the lieutenant's desk.

6 Q And is that where you sat when you were assigned as east
7 activities lieutenant?

8 A Yes.

9 Q And showing you Government's Exhibit 103-B, what is that?

10 A That's the second desk in the lieutenant's office.

11 Q And are we sort of facing towards the doorway?

12 A Yes.

13 Q When you say that's the second desk, are you -- can you
14 indicate for the record which desk you're referring to in the
15 photo?

16 A (Indicating).

17 MS. ARGENTIERI: Indicating for the record the desk
18 to the left.

19 Q 103-C, what is this a photo of?

20 A That's a closeup photo of the desk I sit at.

21 Q And looking at this photo, can you explain where you have
22 this -- the cleaning supplies and bags that you were just
23 talking about?

24 A Behind the desk on the floor corner.

25 Q You're indicating in this corner behind the desk?

Metzger - Direct - Argentieri

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1 A Yes.

2 Q Showing you Government Exhibit 103-E in evidence. what is
3 this a photo of?

4 A A photo of a locker in the lieutenant's office.

5 Q And which locker would you keep the supplies for everyone
6 in?

7 A The locker that's open in the middle.

8 Q And which locker did you keep the -- did you lock with the
9 other supplies?

10 A The last locker to your right.

11 Q Do you see Lt. Martinez anywhere in the courtroom here
12 today?

13 A Yes, I do.

14 Q Can you identify him using an article of clothing?

15 A I'm sorry?

16 Q Can you just identify him by describing an article of
17 clothing? I'm sorry if I said that too fast.

18 A He's wearing a blue suit jacket.

19 Q So a blue jacket?

20 A Yes.

21 MS. ARGENTIERI: Indicating the defendant for the
22 record.

23 THE COURT: Yes.

24 Q When, if ever, did you have a conversation with the
25 defendant about bringing inmates down to clean?

Metzger - Direct - Argentieri

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- 1 A He only told me twice and brought them down to clean.
- 2 Q What exactly did he say to you?
- 3 A I brought the girls down to clean.
- 4 Q What --
- 5 A Very general.
- 6 Q -- and what was your understanding of who he was referring
- 7 to?
- 8 A There was no understanding. We didn't talk about who he
- 9 was referring to.
- 10 Q Well, you said girls, so what was your understanding of
- 11 who the "them" was?
- 12 A Just a general statement, like who normally comes down, I
- 13 don't know.
- 14 Q Meaning who? What types of inmates?
- 15 A Oh, female inmates.
- 16 Q Now did you ever learn which inmates the defendant was
- 17 bringing down to clean?
- 18 A Yes.
- 19 Q How?
- 20 A The second floor orderly that cleaned the second floor,
- 21 she mentioned that -- the names of the inmates.
- 22 Q Okay. And I've instructed you not to say one of the
- 23 inmates names today, is that correct?
- 24 A Uh-hum.
- 25 Q And I'm going to show you photos and stuff.

Metzger - Direct - Argentieri

801

1 A Okay.

2 Q And how many inmates did West tell you the defendant had
3 brought down to clean?

4 A Two.

5 Q I'm showing you Government Exhibit 8, was this one of the
6 inmates?

7 A Yes.

8 Q I'm showing you Government Exhibit 2, was that the other
9 inmate?

10 A Yes.

11 Q Now looking at Government Exhibit 2, when, if ever, did
12 this inmate clean for you?

13 A She was on my detail. She came out a few times.

14 Q And what was she like when she cleaned for you?

15 A She was fine.

16 Q What language did she speak?

17 A She's not too fluent in English, I know.

18 Q And when, if ever, did you have a conversation with inmate
19 West about the quality of the work or about the --

20 MS. ARGENTIERI: Strike that.

21 Q When inmate West told you who Martinez had brought down
22 clean, what was she telling you about it?

23 A She just mentioned that inmates were brought down and she
24 felt that she still had to clean up, although they were brought
25 down.

Metzger - Direct - Argentieri

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1 Q Meaning that it was still dirty?

2 A Right.

3 Q The lieutenant's office?

4 A No. It was the bathroom.

5 Q Okay.

6 A It was nothing -- it was very general.

7 Q Okay. And I should have asked you, when you brought
8 inmate West down to clean, what areas did she clean?

9 A All the areas, lieutenant's office, bathroom, hallways.

10 Q That general area?

11 A Yes, all the areas I mentioned. That she was the only one
12 cleaning down on the second floor.

13 Q Now as a lieutenant, what if any, access do you have to
14 different systems that contain inmate information?

15 A We have access to several systems. You have BOPware, you
16 have SENTRY, you have TruScope, you have access.

17 Q And as part of your access to those systems, what if any
18 access do you have to inmate visitor records?

19 A You have access.

20 Q In all your time at the MDC, has a female inmate ever
21 approached you to report a PREA complaint against staff?

22 A No, they have not.

23 MS. ARGENTIERI: No further questions.

24 CROSS-EXAMINATION

25 BY MR. RICCO:

Metzger - Cross - Ricco

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- 1 Q Good afternoon. Good afternoon, Lieutenant.
- 2 A Good afternoon.
- 3 Q How many years have you been at MDC at CO?
- 4 A Almost 14.
- 5 Q And I think the last question was in the 14 years that you
- 6 have been working at MDC, has a female staff (sic) --
- 7 complained to you about improper conduct by a staff member?
- 8 And I think you said no, right?
- 9 A Female inmate, right?
- 10 Q Female inmate, yes.
- 11 A No, they have not.
- 12 Q But in the time period that you have been there as a
- 13 supervisor, you are aware that there have been several
- 14 complaints by female staff -- of female inmates against staff
- 15 members, at least allegations of it, isn't that correct?
- 16 A Yes. Yes.
- 17 Q And so therefore, they are reporting it to somebody,
- 18 right?
- 19 A Yes.
- 20 Q Now have male staff -- male inmates reported bad contact
- 21 to you?
- 22 A No.
- 23 Q But we do know that there have been incidents involving
- 24 male detainees, isn't that correct?
- 25 A Correct.

Metzger - Cross - Ricco

804

1 Q I just have a couple of questions. Just for the juror's
2 sake, is your job difficult?

3 A At times it is.

4 Q Okay. Why? For the juror's sake, why is your job
5 difficult?

6 A Only because you always want to come in and make sure that
7 everybody is safe coming in and going out. That's the main
8 thing and you don't ever want, you know, there's something that
9 happened one day and you go home, and everybody doesn't go home
10 with you. That's the main thing for me.

11 Q Okay. And how has your interaction with the detainees
12 been over the years? How would you describe that, again for
13 the juror's sake?

14 A Can be difficult at times. I mean, just like any other --
15 it's -- I mean it's a jail. I mean, so it's not going to be
16 perfect everyday.

17 Q One of the practices that you have, I think that you told
18 us, that you send the emails out when work is completed.

19 A Correct.

20 Q And that's sent out to what I think the Bureau of Prisons
21 called the B.R.O. lieutenants, right?

22 A Right.

23 Q And --

24 A Just not B.R.O. lieutenants, it's safety because they're
25 in charge of cleaning, other departments as well, unit team

Metzger - Cross - Ricco

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1 that's on that side of the building.

2 Q Okay. And that email will go out to a dozen or more
3 people, isn't that right?

4 A Correct.

5 Q Now there's some lieutenants, they don't have that
6 practice, isn't that right?

7 A True.

8 Q But you do.

9 A Yes.

10 Q Pretty -- I just want to ask you one or two questions
11 about it. I think the jury's got it. Prison Rape --

12 A Rape Elimination Act.

13 Q -- Elimination Act.

14 A I did remember.

15 Q Right.

16 A I'm sitting -- I didn't want to say it. I'm a little
17 nervous. I've never been in a courtroom a day in my life. So
18 I'm a little nervous.

19 Q Okay. All right. I'm going to try to ask you a few
20 questions --

21 THE COURT: See, it's not so terrible.

22 Q Okay. Is it fair to say that PREA came in existence for
23 exactly what it says, to eliminate prison rape and sexual
24 abuse, right?

25 A Yeah. Yes.

Metzger - Cross - Ricco

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1 Q And it's a pretty much, a zero tolerance program, right?

2 A Correct.

3 Q You get caught, you're finished.

4 A Yes.

5 Q If you're a staff person and you're caught having any kind
6 of sexual contact, touching, doing stuff you're not supposed to
7 be doing, you could be demoted, right? You could be fired,
8 right?

9 A Uh-hum.

10 Q You have to say yes or no, I am sorry.

11 A Oh, yes, I am sorry.

12 Q Okay. And depending on the nature of the contact, you
13 could be prosecuted, right?

14 A Yes.

15 Q And in the time that you've been at MDC, you've seen
16 people fall into all three of those categories, isn't that
17 correct?

18 A That's correct.

19 Q Now is it also fair to say that PREA is a work in
20 progress? In other words, you're learning how to pick up on
21 things today that maybe you didn't pick up on five years ago.

22 A From a lieutenant's stand point?

23 Q Yeah, from your stand point.

24 A I know that as far as reporting, I feel that the steps
25 that we take that we're good in the notifications. As far as

Metzger - Cross - Ricco

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1 being approachable, I feel that we are. So I would hope that
2 if someone had something to say, they would say it to me.

3 Q Okay. Because you, Lieutenant. Metzger, would take the
4 appropriate action, isn't that correct?

5 A Correct.

6 Q And that would be regardless of who the staff person,
7 isn't that right?

8 A Correct.

9 Q Or regardless of who the detainee is, right?

10 A Correct.

11 Q Now you have a professional -- your relationship with Lt.
12 Martinez is professional, isn't that correct?

13 A Yes. We were peers and, you know, colleagues. We be
14 peers as lieutenants. We have no issues. We were not social.
15 I mean, we're not social outside of work but we were good.

16 Q And you depended on his work. He depended on your work,
17 right?

18 A Uh-hum.

19 Q You were shown a photograph of an individual who is
20 described in this case as Maria.

21 A Yes.

22 Q Okay. And you said you had the occasion for her to work
23 in your detail from time to time, right?

24 A Yes.

25 Q You ever pick up from her that she was under any type of

Metzger - Cross - Ricco

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1 distress or stress?

2 A No.

3 Q I think that --

4 A I mean, that she didn't -- I didn't see her much. She was
5 on my detail. She came out a few times and then she also
6 worked in -- on day watch in medical.

7 Q Okay.

8 A She was also a medical orderly.

9 Q And I'm really asking you about your interaction.

10 A Uh-hum.

11 Q And the interaction that you had with her, I think that
12 you said she was fine.

13 A Yes.

14 Q If she was under stress, you didn't see it.

15 A No, I did not.

16 Q She came down. She did her work, like anybody else,
17 right?

18 A Yes.

19 Q And she left.

20 A Yes.

21 Q With everybody else.

22 A Correct.

23 Q If a person -- you were telling us if a male inmate is
24 complaining of being assaulted --

25 A Uh-hum.

Metzger - Cross - Ricco

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1 Q -- physically, sexually, or otherwise, there are more
2 options within the facility to move that inmate, correct?

3 A Physically, meaning like for the sexual content of it, in
4 PREA, when you lock a inmate up or SHU or place an inmate in
5 special housing, that's so-called -- they want to say that's a
6 punishment, So you shouldn't be punishing that person for
7 reporting. But in the west building -- there's two buildings,
8 west and east, it's all male. so you have the ability to put
9 them on another housing unit --

10 Q Yes.

11 A -- you know, while this investigation goes on, so they're
12 not segregated and they still have some of their, you know,
13 privileges. So they're not, you know, being punished for
14 reporting.

15 Q Right.

16 A But with the female inmates, there's only two units. So
17 you still want to protect them, so you place them in special
18 housing because of the fact that you don't have the ability to
19 move them around or transfer them at that time.

20 Q Right. Now on some occasions, females have been
21 transferred over to the MCC, isn't that correct?

22 A Correct.

23 Q Okay. And no question that the SHU is a harsh place,
24 correct? Well, I take back the word harsh.

25 A I wouldn't say harsh.

Metzger - Cross - Ricco

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1 Q It's a secure place.

2 A It's a secure place.

3 Q And a person who reaches out -- if a person were to reach
4 out to you, Lieutenant, and out of fear, they were being
5 victimized sexually, the first thing you want to do is to
6 protect that person and not put them back in a situation where
7 they could be in harm's way, right?

8 A Right.

9 Q And unfortunately, at the MDC, the first place they would
10 go is the SHU, correct?

11 A If they're female inmate while this investigation is in
12 process, yes.

13 Q All right. But there are other options. The person could
14 be transferred to MCC.

15 A Sometimes, there might not be another option. Their case
16 might be in Brooklyn, there -- for whatever case may be. MCC
17 might not have room, so that might not always be the case.

18 Q That's right.

19 A So --

20 Q And I am not trying to say --

21 A But initially, you know, when this is happening, say it
22 happens Monday, I call MCC, what am I going to do with the
23 inmate in the interim. If it happens in the evening watch, a
24 more quiet shift, 4 p.m. to 12, when less staff is here, I
25 would have to protect that inmate.

Metzger - Cross - Ricco

811

1 Q Okay. Okay. But you could pursue other options, whether
2 or not they were available.

3 A You could pursue but immediately, I would say no at that
4 time.

5 Q Right.

6 A At that time if it happens on an off-shift, the shift I
7 work, 4 p.m. to midnight, if an allegation was made against --
8 sometimes a female could say well, it was two other females,
9 what do you do?

10 Q Okay. And that's because the first thing that you want to
11 do is protect the person and deal with the other issues
12 secondarily, correct?

13 A Correct.

14 Q One last question, during the time that you had been in
15 the supervisory capacity, have you become aware that staff
16 members provide personal information about themselves to
17 detainees?

18 A No.

19 Q Okay. And are you aware of whether or not staff brings
20 gifts into the jail to the female detainees?

21 A Not that I have been made aware.

22 Q Okay.

23 A No.

24 Q All right. Thank you very much. No further questions.

25 MS. ARGENTIERI: No further questions.

Metzger - Cross - Ricco

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1 THE COURT: Thank you.

2 THE WITNESS: Thank you.

3 (Witness excused.)

4 MS. SHIHATA: The government calls Special Agent
5 Laura Riley.

6 LAURA RILEY, GOVERNMENT'S WITNESS, SWORN

7 MR. RICCO: Your Honor?

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Metzger - Cross - Ricco

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1 (Discussion held at sidebar.)

2 MR. RICCO: Judge, I have one question I wanted to
3 ask -- I have one question that I wanted to ask Lieutenant.
4 Metzger and rather than bring her back for the defense case, if
5 it was convenient, I would like to do it now before they
6 started the examination of the next witness.

7 MS. SHIHATA: And the government has no objection.

8 THE COURT: Thank you.

9 (Discussion concludes at side bar.)

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Metzger - Cross - Ricco

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1 (Lieutenant. Metzger retakes the stand.)

2 THE CLERK: The Court reminds you you're still under
3 oath.

4 THE COURT: There's one or two questions that counsel
5 wanted to ask you again. Relax. It wasn't so bad, so relax.

6 RESUMED CROSS-EXAMINATION

7 BY MR. RICCO:

8 Q Lieutenant. Metzger, forgive me.

9 A Okay.

10 Q MDC has something called a disturbance control team, DCT,
11 isn't that correct?

12 A Yes.

13 Q And is it fair to say that the DTC, that's like the ESU
14 unit in the police department?

15 A Yes.

16 Q They -- it's like an emergency response team?

17 A That's correct.

18 Q Okay.

19 A That's correct.

20 Q Okay, I am sorry. And do they train or is it just anybody
21 can sign for it.

22 A No, they train and they have to qualify to be on the team.

23 Q Okay. Are you familiar like with the training, what is
24 the training? Do they go to class? Do they go to the field?

25 A I believe they do both but I am not really familiar with

Metzger - Cross - Ricco

815

1 all the training.

2 Q Okay. And when that training is taking place, is that
3 amongst like -- like, for example, does that training take
4 place on the second floor at the lieutenant's office? No,
5 right?

6 A No, no. That definitely does not.

7 Q It takes place in a designated place within the facility,
8 if it's in the facility in a designated place outside the
9 facility, if that's the case.

10 A It's taken place in the facility, as well as outside.

11 Q All right.

12 A In both areas.

13 Q Okay. And those would not be areas where there's contact
14 with detainees, isn't that correct?

15 A Correct.

16 Q All right. Thank you very much. No further questions.

17 A Okay.

18 Q Sorry to bring you back.

19 A That's okay.

20 MS. ARGENTIERI: No further questions.

21 THE COURT: How long is the next witness likely to
22 be? Is this a time to break for lunch or --

23 MS. SHIHATA: I think it might make sense to break
24 for lunch.

25 THE COURT: Okay. We're going to break for lunch

Metzger - Cross - Ricco

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1 right now, ladies and gentlemen.

2 THE CLERK: All rise.

3 (Jury exits courtroom.)

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Colloquy

817

1 (Charge Conference begins.)

2 THE COURT: Could you come up for a minute? I just
3 want to be sure I understand some things about the structure of
4 this indictment in terms of your --

5 MS. ARGENTIERI: Sure. Can I just grab a piece of
6 paper, Judge? I mean, I am sorry --

7 THE COURT: Grab whatever you want. I generally like
8 to do these things on the counsel table rather than up here but
9 it takes a little while to set that up, so we could all sit
10 together and have a conversation rather than a stilted
11 presentation.

12 MS. ARGENTIERI: Okay.

13 THE COURT: I learned this, I don't know how many
14 years ago, from Judge Weinstein. I think when I started the
15 United States Attorney's Office, it was in 1970, so that's when
16 I learned it from Judge Weinstein.

17 MR. RICCO: Judge, since we're going to be going over
18 housekeeping issues, would it be okay if Lt. Martinez --

19 THE COURT: Oh, yeah.

20 MR. RICCO: -- goes to lunch?

21 THE COURT: Yeah.

22 MR. RICCO: And you're okay with that, marshal?

23 THE MARSHAL: Yes.

24 (Defendant exits courtroom.)

25 THE COURT: Well, it's slightly more than

Colloquy

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1 housekeeping but it's legal issue and the defendant's presence
2 is not required for legal issues, is --

3 MR. RICCO: And Mr. Martinez is okay with that.

4 THE COURT: Yeah, he indicated that.

5 MR. RICCO: Okay. I am sorry, Judge.

6 THE COURT: You don't happen to have the charge here,
7 Andrew, do you?

8 THE LAW CLERK: The indictment?

9 THE COURT: Yes.

10 THE LAW CLERK: It's right here.

11 THE COURT: The draft charge.

12 THE LAW CLERK: Oh, let me get it.

13 THE CLERK: Judge, how about I mark these into
14 evidence for the record. Your email to counsel dated January
15 12th is marked Court Exhibit 2. The jury instruction is 2-A
16 and the redline, 2-B. And your email dated to counsel dated
17 the 14th, has been marked Court Exhibit 3. Ms. Argentieri's
18 email on the 14th has been marked Court Exhibit 4 and the
19 proposed verdict form, 4-A and her email of January 15 is Court
20 Exhibit 5 and that proposed verdict form is 5-A.

21 (Court's Exhibits 2, 2-A, 2-B, 3, 4, 4-A, 5 and 5-A were marked
22 for identification, as of today's date)

23 THE COURT: So I think my email, I don't have it in
24 front of me, to you -- I may have it in front of me, wait. So
25 Count -- I am just asking, so that I understand. I am not

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1 raising anything that should --

2 MS. ARGENTIERI: Not judging.

3 THE COURT: I'm not judging, right.

4 MS. ARGENTIERI: Okay.

5 THE COURT: I just want to be sure I understand. I
6 don't want to get into a fight with you here.

7 MS. ARGENTIERI: Never.

8 THE COURT: An argument.

9 MS. ARGENTIERI: Never, never, okay.

10 THE COURT: So on my instructions on page 13, I quote
11 Count 1. And that deals with December 13th, 2015.

12 MS. ARGENTIERI: Judge, I heard on page 13 and then I
13 lost that.

14 THE COURT: I said I quote, I set out -- I was trying
15 to avoid setting out each count that was proposed. I was
16 trying to sort of simplify the charge. So I first set out
17 Count 13 -- I'm sorry, Count 1, which talks about oral sex on
18 December 13th, 2015.

19 MS. ARGENTIERI: Yes, Judge.

20 THE COURT: Okay. And then it's on Count 5, -- well,
21 here is the indictment. Did you -- see, I didn't set out Count
22 5. This is why I -- then Count 5 says on or about December
23 13th, it deals with rape.

24 MS. SHIHATA: Contact between the penis and the
25 vulva.

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1 THE COURT: Yeah, I mean that's --

2 MS. ARGENTIERI: Yes.

3 THE COURT: -- you know, that's medical terms but for
4 shorthand, we could -- as opposed to oral sex, it involves
5 rape.

6 MS. ARGENTIERI: Okay.

7 THE COURT: And then you tell me in number 2 on your
8 email, in response to me, you say the second date the sexual
9 acts occurred in the date range of 2015 and February 2016 --

10 MS. ARGENTIERI: Right.

11 THE COURT: Now where is that in the indictment?

12 MS. ARGENTIERI: Judge, the indictment charges it as
13 in or about and between December 2015. It starts at Count 11.

14 THE COURT: Oh, I see it at Count 9.

15 MS. ARGENTIERI: I'm sorry, it starts at Count 9.

16 THE COURT: So that's separate from what we just
17 discussed.

18 MS. ARGENTIERI: Yes. And, Judge --

19 THE COURT: So I --

20 MS. ARGENTIERI: Sorry.

21 THE COURT: It's not argument, I told you. I am just
22 -- let me ask a question.

23 MS. ARGENTIERI: Okay.

24 THE COURT: So basically, the reason for the range of
25 December 15th to 2016, is that you don't know the date of the

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1 alleged sexual act -- that the alleged sex -- this only covers
2 one sexual act.

3 MS. ARGENTIERI: Yes.

4 THE COURT: But you don't know the date.

5 MS. ARGENTIERI: Exactly.

6 THE COURT: So it seems to me that that should be
7 clear that this -- it's confusing to give a time -- an
8 overlapping range because if -- well, for a variety of reasons
9 but mainly because she was testifying to any number of
10 aggravated sexual acts that were occurring and I would suggest
11 that the way to do this is -- you know, I am talking off the
12 top of my head and I usually like to write but the way to do
13 this, it should have said on or about and between 2015,
14 December 2015 and February 16h, both dates being approximate
15 and inclusive.

16 The thought I want to get in there is on a date, on a
17 specific date unknown to the grand jury. That's the way this
18 should have been written.

19 MS. ARGENTIERI: Well --

20 THE COURT: In other words, one incident on a
21 specific date during this period, the date of which is unknown
22 to the grand jury.

23 MS. ARGENTIERI: Well --

24 THE COURT: I am doing this off the top of my head
25 and if I were writing it, I would do it more carefully. I

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1 just want you to understand the thought.

2 MS. ARGENTIERI: I agree with you that that is
3 confusing. When we saw your email, we understood where you
4 were coming from. One thought we had, which you feel free --

5 THE COURT: I know what your special verdict sheet --

6 MS. ARGENTIERI: Oh, okay. This is separate and
7 apart from that. I won't take that personally. I'm just
8 kidding.

9 THE COURT: Don't take it personally or take it
10 personally, it's not personal. It's legal.

11 MS. ARGENTIERI: Okay. On page 13, we thought that
12 one way to make this clearer, this page you were just reading
13 from, Judge, is we could say where it says on or about December
14 13th, 2015, under that, to make clear that it's different
15 incidents on those dates, we could change the language to one
16 incident on or about and between December 15th and February
17 2016.

18 So it became clear that there was one incident
19 between those date ranges --

20 THE COURT: Well, let me first get your suggestion.
21 It would be on page what for the moment?

22 MS. ARGENTIERI: Page 13.

23 THE COURT: Yeah. And where would it be?

24 MS. ARGENTIERI: Second bullet point.

25 THE COURT: Yeah, and you would propose?

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1 MS. ARGENTIERI: On -- one incident, on or about and
2 between and we would do that for the second, third and fourth
3 bullet points.

4 THE COURT: Well, it would be one incident other than
5 the incident --

6 MS. ARGENTIERI: Yes.

7 THE COURT: -- referred to in Count 5. In Count 1, I
8 am sorry.

9 MS. ARGENTIERI: I mean, Judge --

10 THE COURT: But I think we need some explanation. I
11 mean, the words -- believe me, I didn't make up the words,
12 unknown to the -- the date unknown to the grand jury. Those
13 words have been used in indictments before.

14 MS. ARGENTIERI: Right.

15 THE COURT: And I am saying the grand jury, not you
16 but if you want, I'll say unknown to you, right?

17 MS. ARGENTIERI: Would you say on a specific date
18 unknown to the grand jury because for some of the dates based
19 on the evidence, the grand jury --

20 THE COURT: Yeah, but I am relying on your email
21 which says in bullet point two -- do you see your own email?

22 MS. ARGENTIERI: I do.

23 THE COURT: You say the indictment also charges
24 second, a date a sexual occurred within the date range. The
25 indictment also charged another act that occurred between

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1 December 15th, an incident she described as occurring after the
2 first assault.

3 MS. ARGENTIERI: Yes.

4 THE COURT: And before the Facebook call in which
5 Officer D'Anello Smith brought the victim.

6 MS. ARGENTIERI: Right.

7 THE COURT: So would -- if I understand it, this date
8 range is basically referring to this incident. You just don't
9 know. The reason you have in or about between December and
10 February is because you don't know what date --

11 MS. ARGENTIERI: We don't know the specific --

12 THE COURT: -- that particular incident occurred.

13 MS. ARGENTIERI: Correct.

14 THE COURT: That's all -- I just want to understand
15 that.

16 MS. ARGENTIERI: Yeah.

17 THE COURT: With that understanding, I could fix it.

18 MS. ARGENTIERI: That's absolutely right, Judge.

19 THE COURT: Particularly if I am going to send the
20 indictment into the grand jury and --

21 MS. ARGENTIERI: And --

22 THE COURT: Which I normally do and I think the
23 indictment has to be fixed to somehow indicate what you -- the
24 concept that you indicated as to how you would fix the
25 instruction.

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1 MS. ARGENTIERI: And we were thinking that one way to
2 do that is to tell the jurors that the indictment refers to
3 four -- five incidents on four dates. But they're all
4 separate.

5 THE COURT: You see, this is all confusing. My law
6 clerk, who is a mathematician was telling me five and four
7 charged the next number of counts and I was losing him.

8 MS. ARGENTIERI: Okay.

9 THE COURT: And I am trying to write something for
10 lay people.

11 MS. ARGENTIERI: Right.

12 THE COURT: And you've over -- again, don't take it
13 personally, take it personally, you have over complicated this
14 case with a 20-count indictment. Some of the duplicate counts,
15 I understand. Obviously, you want counts that don't require --
16 which consent is irrelevant --

17 MS. ARGENTIERI: Right.

18 THE COURT: -- because as I understand it, part of
19 the -- part of his defense is that it was consensual, although
20 I don't know how far -- if it gets in the public -- little, but
21 I understand why you want some of it but --

22 MS. ARGENTIERI: Okay.

23 THE COURT: -- you've over complicated the case. For
24 example, the -- I am totally unpersuaded by why you need the
25 Eighth Amendment and aggravated -- I'm not saying I am doing

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1 anything, so don't get excited.

2 MS. ARGENTIERI: Right.

3 THE COURT: But I am not persuaded as to why it's
4 necessary. They're basically the same thing. I know it's a
5 different element that the Eighth Amendment, one, requires
6 under color of law, but that's not an issue in this case. So
7 if you accept that as not an issue in this case, you have ten
8 counts for what amounts to five of the same acts but that's not
9 here nor there.

10 MS. ARGENTIERI: Right.

11 THE COURT: But all I am -- I am raising that issue
12 now, not to get involved in that discussion but because -- you
13 know, your proposed instruction there are four crimes, and
14 five, blah, blah, blah, blah, that doesn't do it for me. And I
15 don't know what objection you have to -- you could do it or I
16 could do it but I think if I am going to send the indictment
17 in, as opposed to putting every count in the indictment in, I
18 want it changed to indicate the concept that you referred to
19 and the fact that it's on a date, on a specific date unknown to
20 the grand jury.

21 MS. ARGENTIERI: Judge, I don't know that we could
22 change the indictment.

23 THE COURT: Sure you can. Don't forget, you're not
24 the one who is entitled to an indictment. It's the
25 Constitution guarantees the defendant a right to an indictment

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1 and if he wants to consent to changing the indictment, just as
2 he could consent to waiving one all together, I can do it.

3 And he's not going to -- what is he going to do,
4 appeal when he is consented? This indictment is not for your
5 benefit, it's for the -- theoretically, it's to protect the
6 defendant, although in fact, 99 percent of the time, it doesn't
7 operate that way. And it's also a notice pleading, so that he
8 knows what he has to defend against.

9 And in both instances, if he is willing to let me
10 correct it in this minimal way -- don't forget, God forbid I
11 should change anything, I would be adding at most the concept
12 reflected in your words and that's what it should have been to
13 begin with on a date unknown to the grand jury and you're
14 perfectly willing to say so the -- she can't pinpoint the exact
15 date, so what?

16 MS. ARGENTIERI: Right.

17 THE COURT: This is not a big deal. He's not
18 entitled to be acquitted because she can't pinpoint the date.

19 MS. ARGENTIERI: Right.

20 THE COURT: So I mean I would -- if you want to take
21 a -- I just don't want to waste time with a -- he has -- so far
22 he has no objections to my charge, so I don't know what
23 objections you have but I don't want to -- that is he sent
24 Paula an email -- he sent an email to you but I think he cc'd
25 Paula on it, which is why I know, he said he had no objections

1 to the charge.

2 So that's usually half of any charge conference. I
3 don't know whether you do or not but --

4 MS. ARGENTIERI: We just --

5 MS. SHIHATA: We had some minor things that we
6 discussed with Mr. Ricco and that we're actually both in
7 agreement on that we were going to raise but very minor.

8 THE COURT: Well, if you're both in agreement on,
9 I'll give you a copy of the charge and you could just change
10 it, so we don't have to sit around --

11 MS. SHIHATA: Okay.

12 THE COURT: So that's really my only -- that's what I
13 wanted to go over now.

14 MR. RICCO: Well, Judge, I know that --

15 THE COURT: Now if you want -- I don't want to send
16 in the indictment this way. In fact, in one other place, just
17 to confuse things, I think on the initial civil rights count, I
18 thought -- no, I guess I was wrong. I thought I saw an over
19 arching count.

20 MS. SHIHATA: I'm sorry, I couldn't hear you.

21 THE COURT: Forget it. I was talking to myself.

22 MS. SHIHATA: So --

23 MS. ARGENTIERI: Judge, we will mark up a version
24 with our agreed changes for you to look at. Does the
25 defendant, just so I understand it, and I can sort of consent,

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1 he's not here, so obviously he can't consent but do we need to
2 set time for the defendant -- for Mr. Ricco to talk about this
3 concept of the indictment with the defendant and let us know?

4 THE COURT: Oh, sure.

5 MR. RICCO: And I am certain he is going to --

6 THE COURT: I am sure he will.

7 MR. RICCO: -- agree with the outline that the
8 Court's set forth because I think the Court is right.

9 MS. ARGENTIERI: Okay. And, Judge, did you want to
10 make the change or did you want us to make the change?

11 THE COURT: Well, you've give me your language for
12 the bullet point. For example, you said, if I can read my own
13 handwriting, on the second bullet point -- I am going to write
14 in one incident, other than the incident referred to in Count
15 1, in or about and between December 15th and February 2016, on
16 a date unknown to the grand jury --

17 MS. ARGENTIERI: Yes, Judge. And I think if we're
18 going to do that for Count 1, we also have to do it for --

19 THE COURT: For the other counts that it's applicable
20 for.

21 MS. ARGENTIERI: For January 2016.

22 THE COURT: Right.

23 MS. ARGENTIERI: Yes, agreed.

24 THE COURT: We have to do that. And I think that
25 problem is present with respect to other counts -- under sets

1 of counts.

2 MS. ARGENTIERI: Yes.

3 THE COURT: My law clerk, he is good at this stuff.
4 He'll figure it out.

5 MS. ARGENTIERI: So my understanding from what you
6 just said was that you were going to do it for the indictment
7 or is that something the Court wanted us to do.

8 THE COURT: Either way. You want me to do it, I'll
9 do it.

10 MS. SHIHATA: We're happy to do it, Judge, I just
11 want to make sure we get the exact language that you wanted.

12 THE COURT: Well, the concept is that the date is --
13 it's essentially what Ms. Argentieri suggested. I just want to
14 make it clear that it's talking -- we're really -- because
15 she's testified this happened on numerous times --

16 MS. SHIHATA: Uh-hum.

17 THE COURT: -- so an overarching period is
18 prejudicial and I want to make it clear that we're talking
19 about one date within this period and with respect to the
20 second bullet point, other than the first December 13th date --

21 MS. ARGENTIERI: Understood.

22 THE COURT: -- it's a single act and the date is
23 unknown to the grand jury.

24 MS. ARGENTIERI: Right.

25 THE COURT: And you could say we can't pinpoint the

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1 exact date but that's irrelevant. He's not going to make a big
2 to-do about it.

3 MS. ARGENTIERI: Okay.

4 THE COURT: It's just I want to -- I see degree of
5 prejudice here that's easily avoided.

6 MS. SHIHATA: Yes, your Honor.

7 MS. ARGENTIERI: Okay.

8 THE COURT: And so I am going to give -- Mr. Ricco, I
9 am going to give a limiting instruction with respect to the
10 consensual sex, substantially the way I said it out loud.

11 MR. RICCO: That will be fine, Judge.

12 THE COURT: And I'll send it out before it actually --
13 -- the words leave my mouth, you'll know what it is.

14 MS. ARGENTIERI: Okay.

15 THE COURT: And on -- what do you want me to do about
16 the striking of the testimony? I could just simply --

17 MR. RICCO: Judge, I am --

18 THE COURT: -- not send it in. If the jury should
19 ask --

20 MR. RICCO: I'm satisfied with it not going in. I
21 sort of agree with the Court to single out in that way just
22 invites too much. After all this week of SHU and no SHU, I
23 don't think the jury will remember. If they ask when it
24 doesn't go back, I am satisfied with that, Judge.

25 THE COURT: Okay. Well, she's not satisfied. If it

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1 was up to her, she would have kept going until she got
2 everything in.

3 MR. RICCO: That's true. That's true.

4 THE COURT: It's okay.

5 MR. RICCO: It's okay.

6 THE COURT: Believe it or not, I was once in your
7 shoes.

8 MS. ARGENTIERI: I'm going to take offense to that.
9 Can I do that, Paula?

10 THE COURT: Can you do what? Okay, take care.

11 MR. RICCO: Thank you.

12 THE CLERK: I know this does not go back to the jury
13 because it's testimony outside the courtroom --

14 MS. ARGENTIERI: Okay.

15 THE CLERK: -- does it need to remain under seal?

16 MS. ARGENTIERI: I think the reason it's -- yes,
17 because we referenced an ongoing investigation.

18 THE CLERK: Okay. And you both have this, correct?

19 MS. ARGENTIERI: Yes.

20 THE COURT: Okay.

21 THE CLERK: The other thing is --

22 THE COURT: Paula is taking about the pages -- what
23 is it on a partial transcript of January 12th, pages 51 to --
24 well, pages -- I don't know where it's --

25 THE CLERK: The portion where we sealed the

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1 courtroom, Judge.

2 THE COURT: Well, I don't know -- I was going to say
3 the pages but I am confused by the way it's paginated. Okay.

4 THE CLERK: And, Judge, I just asked the government
5 to give me a redacted version of their exhibit list because the
6 one that we've been working on has Maria's true name.

7 THE COURT: Okay.

8 THE CLERK: Is that okay, counsel?

9 MR. RICCO: Yes, it is.

10 THE CLERK: Okay.

11 MS. ARGENTIERI: Judge, what time did you want us
12 back?

13 THE CLERK: Ten of.

14 MS. ARGENTIERI: And -- sorry.

15 THE COURT: Does that give you enough time?

16 MS. ARGENTIERI: Yes, Judge. Assuming that the next
17 witness is like a half hour to 40 minutes, I know Mr. Ricco
18 said that he has one short witness, do you think that we would
19 be summing up this afternoon?

20 THE COURT: I don't know why not but --

21 MS. ARGENTIERI: Okay, great.

22 THE COURT: You had the whole weekend to prepare.
23 It's not like --

24 MS. ARGENTIERI: No, I just --

25 THE COURT: -- you didn't have enough time. I don't

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1 know whether I can charge today but --

2 MS. ARGENTIERI: Okay.

3 THE COURT: I don't want to recess like at 2:30 and
4 send the jury home. I don't see any point to it. This hasn't
5 been a long trial. It doesn't mean the summation is going to
6 be long because that doesn't have any -- one thing it's never
7 had to do anything to do with the other.

8 THE CLERK: Counsel has provided the estimates to
9 make sure it's fine.

10 THE COURT: Okay.

11 MR. RICCO: Thank you, Judge.

12 (Pause)

13 THE COURT: Could you come back for a minute?

14 MR. RICCO: Yes.

15 THE COURT: Did we resolve who was going to make the
16 changes in the -- oh, assuming the defendant agrees, who is
17 going to make the changes in the indictment that we were
18 talking about, me or you?

19 MS. ARGENTIERI: We were.

20 THE COURT: Okay.

21 MS. ARGENTIERI: Fine. Thank you.

22 (Recess 1:19 until 2:18 p.m.)

23 (Jury enters.)

24 LAURA RILEY, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

25 MS. SHIHATA: May I inquire, Your Honor?

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1 DIRECT EXAMINATION

2 BY MS. SHIHATA:

3 Q Can you please state and spell your name for the record?

4 A Yes. It's Laura, L-A-U-R-A, Riley, R-I-L-E-Y.

5 Q And where do you work?

6 A I work for the Office of the Inspector General, for the
7 Department of Justice.

8 Q What is your title?

9 A I'm a Senior Special Agent.

10 Q And prior to being a Senior Special Agent, did you have a
11 different title?

12 A Yes. I was a Special Agent.

13 Q And how long have you worked as a Special Agent or a
14 Senior Special Agent with the Department of Justice's Office of
15 Inspector General?

16 A Almost 21 years.

17 Q And is that also known as DOJ OIG?

18 A Yes.

19 Q And prior to becoming a Special Agent with DOJ OIG, where
20 did you work?

21 A I worked for the Office of the Inspector General, for the
22 United States Department of Agriculture.

23 Q And how long did you do that for?

24 A Seven years.

25 Q Now, generally speaking, what are your duties and

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1 responsibilities as a Special Agent with the Department of
2 Justice's Office of Inspector General?

3 A I'm responsible for conducting criminal investigations
4 involving staff members of the Department of Justice.

5 Q And what if any connection does the Federal Bureau of
6 Prisons have to the Department of Justice?

7 A Department of Justice is the main agency, and in the
8 agency there's different components and the Federal Bureau of
9 Prisons is one of the components in the DOJ.

10 Q So it's part of the Department of Justice?

11 A Yes.

12 Q And what if any office are you assigned to?

13 A New York field office.

14 Q Now, directing your attention to July 2016, what if any
15 investigation were you involved in at that time?

16 A I was working on an investigation regarding allegations at
17 the MDC Brooklyn.

18 Q And when if -- and by MDC, are you referring to the
19 Metropolitan Detention Center in Brooklyn, New York?

20 A Yes.

21 Q And when, if ever, have you been to the MDC?

22 A I'm there frequently.

23 Q As part of your job?

24 A Yes.

25 Q And how many buildings make up the MDC?

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1 A Two buildings. There's the east building and a west
2 building.

3 Q And what is the street address for the MDC?

4 A It's 8029 -- I'm sorry, 80 29th Street, Brooklyn, New
5 York.

6 Q Now, with respect to the investigation that you were
7 involved in, in July 2016, what if any other law enforcement
8 agencies were involved in that investigation?

9 A The FBI.

10 Q And what is your role in the investigation?

11 A I am the case agent for the OIG.

12 THE COURT: So, I don't understand. Do you work
13 separately from the -- your agents, or are you there to watch
14 them to make sure they carry out their work? I'm not clear
15 what your role is as the representative of the Inspector
16 General.

17 THE WITNESS: My role as an agent in this particular
18 case as an OIG agent, is that I'm assigned to investigate the
19 MDC. The case that I'm working with the FBI, we're working
20 together, so it's a joint, joint case. With my, the OIG itself
21 is separate from the FBI and it's also separate from the BOP.

22 THE COURT: But in this instance, you were working
23 together.

24 THE WITNESS: Together, yes.

25 BY MS. SHIHATA:

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1 Q It's a joint investigation?

2 A Yes.

3 Q And as part of the investigation, what if any
4 investigative techniques did you use, or have you used?

5 A We used Grand Jury subpoenas, we reviewed documents, we've
6 conducted interviews of inmates, interview of BOP personnel.

7 Q I'm showing you what's in evidence as Government Exhibit
8 2. Do you recognize the person in this photo?

9 A Yes.

10 Q And without referring to her real name, have you
11 interviewed this person?

12 A Yes.

13 Q And for purposes of your -- and do you know her true name?

14 A Yes, I do.

15 Q And for purposes of her testimony here today, we'll refer
16 to her as Maria. Okay?

17 A Okay.

18 Q Now, when did you -- approximately when did you first meet
19 Maria?

20 A December of 2016.

21 Q And so approximately how long after your investigation
22 regarding the MDC began?

23 A We started in July, so, six months.

24 Q And when you first met Maria, where did you interview her?

25 A At 201 Varick Street, at the Immigration Customs

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1 Enforcement Office.

2 Q And was she in Immigration and Customs Enforcement custody
3 at that time?

4 A Yes, she was.

5 Q And prior to that interview, what if any investigation did
6 you have into the activities of Carlos Martinez?

7 A None. He was not part of the investigation.

8 Q And prior to this December 2016 meeting, to your
9 knowledge, when if ever had Maria ever reached out to you or
10 anyone else involved in the investigation?

11 A Never. She never reached out to us.

12 Q Now, when you met with Maria in December 2016, to the best
13 of your recollection, who was present?

14 A Myself, Special Agent Christine Doyle, two federal
15 prosecutors, and a Spanish interpreter.

16 Q And can you describe for the jury what Maria's demeanor
17 was like when you met with her that day?

18 A She looked confused to come out and to see, see all these
19 people there to see her. She looked very nervous and she was
20 scared. We explained to her why we were there, and that we
21 were interested in knowing about her stay at the MDC.

22 Q And what if any lawyer was present to represent Maria
23 during this first meeting?

24 A No lawyer.

25 Q And was it a long or short meeting?

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1 A It was fairly short. She was reluctant to speak with us.

2 Q Now, when if ever did you meet with Maria again?

3 A The following month, January of 2017.

4 Q And to the best of your recollection, who was present for
5 that meeting?

6 A Myself, Agent Doyle, Agent Elliott McGinnis. He was there
7 for part of the meeting, two or three federal prosecutors, a
8 Spanish interpreter, an attorney that was representing Maria,
9 their immigration attorney who was also there with a social
10 worker.

11 Q Okay. And a social worker from the immigration attorney's
12 office?

13 A Yes.

14 Q And following the January 2017 meeting, what if any
15 investigation did you begin into the activities of Carlos
16 Martinez?

17 A Well, after that meeting we started investigating Martinez
18 by issuing Grand Jury subpoenas, reviewing some BOP records,
19 other records, and continuing to interview witnesses, both
20 inmates and BOP personnel.

21 Q And was it after that January 2017 meeting that the
22 investigation regarding Carlos Martinez began?

23 A Right. That's when it started because that's the first we
24 learned of an allegation involving him.

25 Q Now, what if any -- I'm sorry.

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1 MS. SHIHATA: Your Honor, at this point I'd like to
2 move the -- read into the record, a stipulation, Government
3 Exhibit 300, and move it into evidence.

4 THE COURT: Any objection? Any objection?

5 MR. RICCO: No, Your Honor. Sorry.

6 THE COURT: Go ahead.

7 (Government's Exhibit No. 300 was admitted into evidence.)

8 MS. SHIHATA: And is it published to the jury?

9 THE CLERK: Yes.

10 MS. SHIHATA: Okay. And the stipulation reads as
11 follows: "It is hereby stipulated and agreed by and between
12 the undersigned parties, that 1., Government Exhibit 211
13 consists of a true and accurate copy of subscriber information
14 from Google Inc., for the email account
15 carlos.rich.martinez@gmail.com, alternate emails refers to an
16 alternate email account for the account user."

17 Paragraph two, "Government Exhibit 212A consists of a
18 true and accurate copy of subscriber information from T-Mobile
19 US Inc., for telephone number 718-490-8719, subscriber name and
20 subscriber address refers respectively to the name and address
21 associated with this phone number. Subscriber name effective
22 date refers to the date the subscriber name became associated
23 with this phone number. Bill name, bill birth date, bill SSN,
24 and bill address refers respectively to the name associated
25 with the billing for this phone number, the subscriber's date -

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1 - the subscriber's birth date, the subscriber's social security
2 number, and the subscriber's address."

3 "Government Exhibit 212B consists of a true and
4 accurate copy of telephone records in spreadsheet format from
5 T-Mobile US, Inc., for telephone number 718-490-8719, for the
6 date of February 8th, 2016 in coordinated universal time, also
7 known as UTC. In February 2016, UTC was five hours ahead of
8 New York time. The first and second columns of Government
9 Exhibit 212B list the date and time of the specified call or
10 text message in UTC. The third column lists the duration of
11 the relevant call in seconds. The fifth column lists the
12 direction of the relevant call or text message, i.e. incoming
13 or outgoing. This stipulation and Government Exhibits 211,
14 212A, and 212B are admissible in evidence at trial"

15 And it's signed by counsel for the defendant and the
16 government, and dated December 29th, 2017.

17 BY MS. SHIHATA:

18 Q Agent Riley, I'm showing you what's in evidence as
19 Government Exhibit 211. Is this subscriber information for the
20 email account, carols.rich.martinez@gmail.com?

21 A Yes, it is.

22 Q And who is the name of the -- what is the name of the
23 subscriber?

24 A It's Google subscriber information.

25 Q Right. What is the name of the subscribe --

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1 A For Carlos Martinez.

2 Q And does it -- and what is the creation date of the
3 account indicated?

4 A It was created on -- in the year 2012, 4/8 at 1:11:04 UTC,
5 which is April 8th.

6 Q So April 8, 2012?

7 A Yes.

8 Q And do you see where it says SMS?

9 A Yes.

10 Q Is there a phone number listed there?

11 A Yes. 718-490-8719.

12 Q And what is the alternate email address for this account?

13 A CRMartinez@bop.gov.

14 Q And what is BOP.gov?

15 A That's the email address for the Bureau of Prisons.

16 Q The Federal Bureau of Prisons?

17 A Yes.

18 Q I'm showing you what's in evidence as Government Exhibit

19 212A. And as we just read in the stipulation, is this
20 subscriber information for telephone number 718-490-8719?

21 A Yes.

22 Q And who is the subscriber for this phone number?

23 A Carlos Martinez.

24 Q And is an address -- subscribe address listed of 9275 Fort
25 Hamilton Parkway in Brooklyn, New York?

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1 A Yes.

2 Q And what is the subscriber status listed here?

3 A Active.

4 Q And this was a document provided by T-Mobile on what date?

5 A It was provided on May 9th, 2017.

6 Q And does it say when this subscriber name was affective
7 for this account? When affective?

8 A Yes, it was affective 11/3/2013.

9 Q And looking down on the exhibit, does it also indicate a
10 date of birth for the Carlos Martinez associated with the
11 billing for this account?

12 A Yes, it does. 11/3/1969.

13 Q And do you see where it says, "Begin service date?" What
14 date is listed there?

15 A Yes. 11/3/2013.

16 Q I'm showing you what's in evidence as Government Exhibit
17 212B, which according to the stipulation is certain call detail
18 records for that same phone number we were just looking at in
19 the previous exhibit. Is that correct?

20 A Yes.

21 Q And I want to direct your attention. And I'm going to
22 zoom in. I'd like to direct your attention to the third line
23 from the bottom, on the first page. Do you see that?

24 A Yes.

25 Q And what is the date indicated for the call referenced in

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1 this line?

2 A It's 2/8/2016.

3 Q So February 8th, 2016?

4 A Yes.

5 Q And the time in UTC listed is what?

6 A 15:06:25.

7 Q And converting to New York time, do you know what time
8 that is?

9 A Right. It would be less five hours, so that would be
10 10:06:25.

11 Q In the morning?

12 A Yes, a.m.

13 Q And the duration of the call?

14 A Five hundred and seventy-four seconds.

15 Q And I'm sorry to put you on the spot. Do you know
16 approximately how much that is in minutes?

17 A It's approximately nine, a little over nine minutes. Nine
18 and a half minutes.

19 Q And when it's -- where, under the column that says
20 "direction," does it indicate whether -- what type of call it
21 is?

22 A Yes, it's incoming.

23 Q And where it says, the column that says, "calling number,"
24 if we scroll down, what is the number listed as the number
25 calling?

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- 1 A Yes. It's 718-840-5000.
- 2 Q So just to be clear, it's an incoming call from that
- 3 number?
- 4 A Yes.
- 5 Q And going to the number subscribed to by Carlos Martinez?
- 6 A Correct.
- 7 Q All right. And then turning to the second line from the
- 8 bottom, if we could just go through that one as well? Is that
- 9 also from February 8th, 2016?
- 10 A Yes, it is.
- 11 Q At what time in UTC?
- 12 A 15:20:01.
- 13 Q Which is what in New York time?
- 14 A It's less five hours, so it's 10:21:02, a.m.
- 15 Q And is that a 77 second call?
- 16 A Yes, it is.
- 17 Q And is that also an incoming call from 718-840-5000?
- 18 A Yes, it is.
- 19 Q I'm showing you what's in evidence as Government Exhibit
- 20 228. Do you recognize this true access user form report?
- 21 A Yes, I do.
- 22 Q And who is it for?
- 23 A It's for Tomas Rodriguez.
- 24 Q And if you look on the left side, does it indicate a phone
- 25 number, a work phone number associated with Tomas Rodriguez?

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1 A Yes, it does.

2 Q And what is that?

3 A It's 718-840-4200, extension 5129.

4 Q And based on your experience, are you aware of what 718-
5 840-4200 is?

6 A That is the main number for MDC Brooklyn.

7 Q And 5129 is Tomas Rodriguez's extension?

8 A Yes, it is.

9 Q Now, in the course of your investigation, what if anything
10 did you ask Officer Rodriguez to do with respect to his phone
11 number?

12 A I asked him if he could call me on my cell phone directly
13 from his desk phone. So he had called me from 718-840-5129.

14 Q And what, if any number, showed up on your cell phone when
15 he called?

16 A 718-840-5000.

17 Q Now, directing your attention to March 8th, 2017, with
18 respect to the investigation what if anything did you do that
19 day?

20 A I visited the MDC, and it went to the second floor in the
21 east building. While I was on the second floor of the east
22 building I viewed the area of -- inside the lieutenant's
23 office, and I viewed the surrounding area.

24 Q And what if anything were you noting while viewing the
25 area?

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1 A I took some notes and I took some photographs. I was also
2 looking for cameras, to see where the cameras were situated in
3 that area.

4 MS. SHIHATA: One moment, Your Honor. I'm sorry.

5 BY MS. SHIHATA:

6 Q Now I'm showing you what's in evidence as Government
7 Exhibit 102A. Do you recognize this, the photo -- the area in
8 this photo?

9 A Yes, I do.

10 Q And what if anything did you observe with respect to
11 cameras in this, in the area depicted in this photo?

12 A In this area, there are no cameras.

13 Q And by cameras, are you referring to surveillance cameras?

14 A Yes, the cameras that are part of the surveillance cameras
15 that they use at the MDC.

16 Q I'm showing you what's in evidence -- I'm showing you
17 what's in evidence as Government Exhibit 102E. Do you
18 recognize this photo?

19 A Yes, this is the hallway that leads from the lieutenant's
20 office down toward the suicide watch cells.

21 Q So is this the hallway directly in front of the
22 lieutenant's office?

23 A Yes.

24 Q And what if anything did you observe regarding cameras in
25 this hallway?

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1 A There's one camera in this hallway that's facing away from
2 the lieutenant's office toward the suicide watch cells. And
3 you can actually see the camera. It's up here on the pole, and
4 it's facing in the direction away from the lieutenant's office.

5 Q Can you circle it on the screen?

6 A Sure.

7 Q Okay. And indicating for the record, a mark on the top of
8 what looks like a column behind a black cabinet. Is that
9 correct?

10 A Yes.

11 Q And I'm showing you what's in evidence as Government
12 Exhibit 102F. Is this the same hallway from the other side, a
13 view from the other side?

14 A Yes.

15 Q And the camera that you circled in the previous exhibit,
16 do you see it in this exhibit as well?

17 A Yes, I do.

18 Q And can you describe for the jury where that is?

19 A There is a column that goes up over here, and that's
20 toward the left. And it's at the top of the column, facing in
21 the direction of the suicide watch cells.

22 Q So right here, where I'm pointing?

23 A Yes.

24 Q And based on your investigation, what if anything does
25 this camera capture with respect to in front of -- with respect

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1 to the lieutenant's office?

2 A It doesn't capture the lieutenant's office.

3 Q Now, as part of your visit to the MDC in March 2017, did
4 you go into the lieutenant's office itself?

5 A Yes, I did.

6 Q And what if anything did you observe when you went inside
7 the lieutenant's office?

8 A Inside the lieutenant's office is a desk with a computer
9 on top. We -- I accessed -- I was able to view the computer
10 after the camera system was pulled up on the system. So I was
11 able to view the monitor, and it would show the camera system
12 in sort of a 16-grid screen, four across, four down, which
13 showed a multi-view of areas located on the second floor in the
14 east building.

15 MS. SHIHATA: I'm showing the witness only what's
16 been marked for identification as Government Exhibits 103F,
17 103G, and 103H.

18 BY MS. SHIHATA:

19 Q Do you recognize these exhibits?

20 A Yes.

21 Q And what are they?

22 A These are photos of the computer that's on top of the
23 lieutenant's desk, with the camera system view. One is a view
24 of the grid.

25 MS. SHIHATA: I move --

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1 BY MS. SHIHATA:

2 Q And are these fair and accurate photographs?

3 A Yes.

4 MS. SHIHATA: I move to admit Government Exhibits
5 103F, G, and H.

6 MR. RICCO: Without objection, Your Honor.

7 THE COURT: Okay. They're admitted.

8 (Government Exhibit Nos. 103F, 103G, and 103H admitted
9 into evidence.)

10 MS. SHIHATA: Now, I'd like to publish to the jury
11 Government Exhibit 103F.

12 BY MS. SHIHATA:

13 Q Can you describe what this is?

14 A This is the camera system in the multi-view format, where
15 you have 16 screens operating at the same time, so you could
16 see different, different views, all at the same time.

17 Q Okay. And if you'll notice, are certain cameras, on the
18 day you visited, there's footage, correct?

19 A Yes.

20 Q And certain other screens have what looks like a triangle
21 with an exclamation point in it, correct?

22 A Correct.

23 Q And can you read what's -- what it says there?

24 A It says, "The channel is currently in signal loss."

25 Q Now, turning to the left side of this exhibit. I'm just

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1 going to zoom in. What is on the left side?

2 A This is like a directory, because the camera system is for
3 the entire facility. So you, on the left side it would show
4 what, what area is currently on the screen.

5 Q And is there a current area that's highlighted?

6 A Yes.

7 Q And what does that say?

8 A East second floor.

9 Q And so, does that correspond with the cameras that are --
10 that were shown on this screen at the time you took the photo?

11 A Yes.

12 Q Okay. And looking at the left side again, at the other
13 areas that can be accessed, do you -- is there any access
14 available to Unit 6 South?

15 A Yes.

16 Q And is that over here?

17 A Yes.

18 Q Where it says 6 South?

19 A Correct.

20 Q Now, I'm showing you what's in evidence as Government
21 Exhibit 103G. What does this show?

22 A Again, this is the computer monitor with the camera
23 system, with this particular view, the camera system is
24 enlarged to one screen. The picture --

25 Q Go ahead.

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1 A The picture is of the circular door that's located on the
2 second floor.

3 Q And do you know where the door that's pictured here, in
4 Government Exhibit 103G, do you know based on your visit to the
5 MDC where specifically that door is?

6 A Yes, this door separates the hallway where the elevators
7 are, so the other side of the door is where the elevator
8 hallway is. And then there's the secure door. And then once
9 you come through the door, it's the hallway that leads you to
10 the lieutenant's office.

11 Q So I'm showing you what's in evidence as Government
12 Exhibit 101A. Is that the -- is the elevator and secured door
13 you were just discussing in this photograph?

14 A Yes.

15 Q Okay. And I'm showing you what's in evidence as
16 Government Exhibit 103H. What is this?

17 A That's the hallway that leads down to the suicide watch
18 cells.

19 Q And what if any understanding do you have as to which
20 camera captures this image?

21 A This image comes from that same camera I pointed out
22 before on the top of the pole.

23 Q So, showing you what's in evidence as Government Exhibit
24 102F. This camera?

25 A Yes.

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1 Q Now, during the course of your investigation, what if
2 anything did you learn regarding the retention of video camera
3 footage at the MDC?

4 A That it gets written over as new images are being
5 captured. It's going, taping over the old, the old one. So
6 they might have camera video surveillance for 14 to 30 days.

7 Q But not beyond that?

8 A No.

9 Q Now, you mentioned -- you testified earlier that you went
10 inside the lieutenant's office as part of your investigation.
11 Correct?

12 A Yes.

13 Q And what if anything did you observe regarding cameras
14 inside the lieutenant's office?

15 A There are no cameras inside the office.

16 Q And are there any -- what if anything did you observe
17 regarding, with respect to whether there are any windows in
18 that office?

19 A There's no windows.

20 Q Okay. Other than a window in the door?

21 A Right. There's the doorway, but the other walls are solid
22 walls. There's no windows or any way to see through the
23 office, or outside.

24 MS. SHIHATA: Now, I'm showing the witness only
25 what's been marked for identification as Government Exhibits

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1 232 and 233.

2 BY MS. SHIHATA:

3 Q Do you recognize these exhibits?

4 A Yes.

5 Q And what are they?

6 A Calendars for the year 2015, and the year 2016.

7 MS. SHIHATA: I move to admit Government Exhibits 232
8 and 233.

9 MR. RICCO: Without objection, Your Honor.

10 THE COURT: They're admitted.

11 (Government Exhibit Nos. 232 and 233 admitted into
12 evidence.)

13 MS. SHIHATA: I'm showing the witness only what's
14 been marked for identification as Government Exhibit 241.

15 BY MS. SHIHATA:

16 Q Do you recognize this exhibit?

17 A Yes, I do.

18 Q And what do you recognize it to be?

19 A This is a calendar that was prepared indicating December
20 of 2015, January 2016, February 2016, marking the dates that
21 Martinez was assigned as the east activities lieutenant.

22 Q I move to -- and have you reviewed this exhibit for
23 accuracy?

24 A Yes, I did.

25 MS. SHIHATA: I move to admit Government Exhibit 241.

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1 MR. RICCO: Without objection.

2 THE COURT: It's admitted.

3 (Government's Exhibit No. 241 admitted into evidence.)

4 MS. SHIHATA: And may I publish it to the jury?

5 BY MS. SHIHATA:

6 Q And looking at page 1 of Government Exhibit 241 -- first
7 of all, can you indicate how this exhibit was compiled?

8 A From reviewing daily assignments of Martinez, and the time
9 and attendance records from Lieutenant Martinez.

10 Q And meaning Government Exhibits 207 and 206?

11 A Yes.

12 Q And what was the purpose of comparing the daily
13 assignments to the time and attendance records?

14 A To make sure that he was actually working that day.

15 Q On the days in this exhibit?

16 A Yes.

17 Q And just to be clear, does this only reflect the dates
18 that Lieutenant Martinez was working when he was assigned as
19 east activities lieutenant?

20 A Yes, that's correct.

21 Q And looking at the right side -- well, looking at the
22 exhibit first, does it indicate which shift Martinez was
23 working on a particular day?

24 A Yes. It has his name and then the number of the shift
25 that he was working.

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1 Q And on the right side does it indicate what number -- what
2 shift corresponds with the number?

3 A Yes.

4 Q Okay. And turning just to December -- Sunday, December
5 13th, 2015, what shift does this indicate Martinez, Lieutenant
6 Martinez was working that day?

7 A The number four shift.

8 Q Which is?

9 A Day watch 4, which is 8:00 a.m. to 4:00 p.m.

10 Q And was he also working as east activities lieutenant the
11 following day on Monday the 14th?

12 A Yes.

13 Q And what shift?

14 A Shift number one.

15 Q Which is what?

16 A The morning watch shift, which is 12:00 a.m., midnight, to
17 8:00 a.m. in the morning.

18 Q And turning to the second page of this exhibit, with
19 respect to January 2016, I just want to point out one date to
20 you. On January 31st, 2016, does this indicate that Lt.
21 Martinez was working as East activities lieutenant, day watch
22 4?

23 A Yes.

24 Q And the last page of this exhibit, directing your
25 attention to February 9th, 2016, what shift, what if any shift

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1 was Lt. Martinez working as east activities lieutenant that
2 day?

3 A He was working the number one shift, which is midnight,
4 12:00 a.m. to 8:00 a.m.

5 Q Okay. I'm showing you what's in evidence as Government
6 Exhibit 208, the True Intel record for Unit 6 South. And I'm
7 turning to page 1781. And specifically, do you see an entry
8 under event date, 12:00 a.m., February 9th, 2016, that
9 indicates R. King on post?

10 A Yes.

11 Q And under event that indicates, begin shift?

12 A Yes.

13 Q Showing you what's in evidence as Government Exhibit 10.
14 Do you know who this is?

15 A Yes.

16 Q Who is this?

17 A It's Officer King.

18 Q I'm sorry, do you know his first name, or initial?

19 A Raymond. R.

20 Q Now, during the course of your investigation, what if any
21 steps did you take with respect to seeking Maria's phone calls,
22 recordings?

23 A We tried to obtain her calls but they were from so long
24 ago that those calls didn't exist.

25 Q And why didn't they exist?

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1 A Because we didn't learn about the investigation until
2 December 2016, January 2017, and she had already left the MDC
3 in April of 2016.

4 Q And so was it your understanding that under the normal
5 practice at the MDC, inmate -- her inmate calls had been
6 purged?

7 A Yes.

8 Q I'm showing you what's in evidence as Government Exhibit
9 225. Do you recognize this exhibit?

10 A Yes.

11 Q And during the course -- have you reviewed this exhibit?

12 A Yes, I have.

13 Q And I'm showing you what's in evidence as Government
14 Exhibit -- I'm sorry. And what is this? What is 225?

15 A It's the daily assignment roster for D. Smith.

16 Q So it's a --

17 A D'Anello Smith.

18 Q Daily assignments for D'Anello Smith?

19 A Yes.

20 Q And did you also review Government Exhibit 207, the daily
21 assignments for Carlos Martinez?

22 A Yes, I did.

23 Q And did you specifically review these two documents in
24 reference to the dates, to the time period between December
25 13th, 2015, and February 7th, 2016?

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1 A Yes.

2 Q And what if anything were you looking for in doing that?

3 A Trying to determine if there was a time when Lt. Martinez
4 was working as the east lieutenant, and if D'Anello Smith was
5 also working as the east internal.

6 Q So east -- when Martinez was working as east activities
7 lieutenant?

8 A Yes.

9 Q And were you looking to see if there were any dates where
10 they were working the same shift, specifically?

11 A Yes.

12 Q And what if anything did you learn from that review?

13 A That there were three dates that overlapped.

14 Q And sitting here today do you recall exactly what those
15 three dates were?

16 A No, I don't have that in my memory.

17 MS. SHIHATA: I'm going to walk up and show the
18 witness only, what's been marked for identification as
19 Government Exhibit 3500-LR-10.

20 BY MS. SHIHATA:

21 Q Have you had a chance to review this?

22 A Yes.

23 Q And does this refresh your recollection as to the three
24 dates that Officer Smith worked as east internal, and Lt.

25 Martinez worked as East activities lieutenant between the dates

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1 of December 13th, 2015, and February 7th, 2016?

2 A Yes. And the three dates are January 16th, 2016, January
3 30th, 2016, and February 6th, 2016.

4 Q And what if anything did you do to confirm that on those
5 three dates that you just mentioned, that Lt. Carlos Martinez
6 and Officer D'Anello Smith were in fact working on those dates?

7 A Well, I reviewed the time and attendance sheet, and their
8 daily assignment roster.

9 (Pause.)

10 MS. SHIHATA: One moment, Your Honor. I apologize.

11 (Pause.)

12 MS. SHIHATA: Showing the witness only what will be
13 marked in a moment as Government Exhibit 242.

14 BY MS. SHIHATA:

15 Q Do you recognize this exhibit?

16 A Yes, I do.

17 Q And what do you recognize it to be?

18 A This is a time line of the relevant events that was
19 created based on the documents, the significant documents that
20 we obtained, and it's in chronological order.

21 Q And did you review this document, Government Exhibit 242,
22 for accuracy?

23 A Yes, I did.

24 Q And with respect to the column on this document that
25 indicates the source of each event listed in the time line, did

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1 you specifically review the source document?

2 A Yes, I did.

3 MS. SHIHATA: I move to admit Government Exhibit 242.

4 MR. RICCO: That's without objection, Your Honor.

5 I've had an opportunity to review it.

6 THE COURT: You said without objection.

7 MR. RICCO: Without objection.

8 THE COURT: It's admitted.

9 (Government Exhibit No. 242 admitted into evidence.)

10 MS. SHIHATA: And I'm showing the witness only what's
11 been marked for identification as Government Exhibit 242-1.

12 BY MS. SHIHATA:

13 Q Is this just a board version of the exhibit we just went
14 over?

15 A Yes, it is.

16 MS. SHIHATA: I move to admit Government Exhibit 242-
17 1.

18 MR. RICCO: Your Honor, I have no objection.

19 THE COURT: It's admitted.

20 (Government Exhibit No. 242-1 admitted into evidence.)

21 MS. SHIHATA: And may I publish Government Exhibit
22 242?

23 BY MS. SHIHATA:

24 Q Can you just explain for the jury how this chart works?
25 Under -- there are three columns. Is that correct?

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1 A Yes.

2 Q And date and time, what does that reflect?

3 A It reflects the date and the time that corresponds with
4 the documents. And then the next column is the event, which is
5 a synopsis of what the document shows. And the third column is
6 the source, which is the actual document we got the information
7 from.

8 Q Okay. And I just want to turn to the last of the pages,
9 page 4 in this document. Do you see where it indicates an
10 entry -- I'm sorry, page 3. Do you see an entry for the time
11 period, March 9th, 2016, to April 14th, 2016?

12 A Yes.

13 Q And what is listed there?

14 A Defendant not on duty as east activities lieutenant.

15 Q And then the next two dates are dates in April. Is that
16 correct?

17 A Correct.

18 Q April 15th, 2016, and April 16th, 2016?

19 A Yes.

20 Q And what if anything does the chart reflect regarding
21 those dates?

22 A For Friday, April 15, 2016, it shows at 12:00 p.m. Officer
23 Nunez begins his shift. At 4:00 p.m. the defendant, Lt.
24 Martinez, begins his shift of 4:00 p.m. to 12:00 a.m., as the
25 east activities lieutenant. And then at 8:30 p.m., Officer

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1 Nunez ends his shift.

2 The next day, Saturday, April 16th, 2016, 8:00 a.m., the
3 defendant, Lt. Martinez, starts an 8:00 a.m. to 4:00 p.m. shift
4 as the east activities lieutenant. At 12:00 p.m. Officer Nunez
5 begins his shift. At 4:00 p.m. the defendant ends his shift.
6 And at 8:30 p.m., Officer Nunez ends his shift.

7 Q Okay. And I'd like to just call your attention to one
8 other date on this exhibit. Now, do you see the entry for, it
9 starts with an entry for Sunday, December 13th, 2015. Is that
10 correct?

11 A Yes.

12 Q And what time did the defendant end his shift that day?

13 A 4:00 p.m.

14 Q And what is indicated in the entry after that?

15 A At 9:29 p.m. the defendant purchases a Plan B pill at Rite
16 Aid.

17 Q And with respect to Monday, December 14th, 2015, what does
18 the chart reflect?

19 A That at 12:00 a.m., midnight, the defendant begins his
20 12:00 a.m., 8:00 p.m. shift as east activities lieutenant. And
21 at 12:19 a.m., the defendant, Lt. Martinez, conducts PREA round
22 in Unit 6 South.

23 Q And is there just -- is there a typo where that should
24 indicate 12:00 a.m. to 8:00 a.m. shift? I'm sorry. On Monday,
25 December 14th?

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1 A Oh, I'm sorry, yes. It's actually, if he's doing a
2 midnight shift it should be from 12:00 a.m. to 8:00 a.m. shift
3 in the morning.

4 Q Okay. And what if anything did the records that you
5 reviewed specifically, Government Exhibit 208, what if anything
6 did that indicate occurred at 12:19 a.m. on December 14th,
7 2015?

8 A From the True Intel records that I reviewed, at 12:19 Lt.
9 Martinez conducted PREA rounds in Unit 6 South.

10 Q Now, did you, in the course of your investigation, did you
11 ever review a document that Lt. Martinez submitted to the MDC
12 regarding an injury he sustained on April 7th, 2016?

13 A Yes, I did.

14 Q And do you recall what type of injury he sustained on that
15 -- he reported sustaining on that date?

16 A It was an injury to his hand, that his hand was bleeding
17 and in pain, and the he needed to report to the hospital, go to
18 the hospital for x-rays to have his hand examined.

19 Q Now, directing your attention to May 25th, 2017, did you
20 arrest the defendant that day?

21 A Yes, we did.

22 Q And where did you arrest him?

23 A At the MDC Brooklyn.

24 Q And were you present for his arrest processing and the
25 taking of pedigree information?

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1 A Yes, I was.

2 Q And now, sitting here today do you recall the exact
3 specifics of the pedigree information that the defendant
4 provided?

5 A No, I don't.

6 MS. SHIHATA: I'm going to show the witness only
7 what's been marked for identification as 3500-LR-7.

8 BY MS. SHIHATA:

9 Q Have you had a chance to review that document?

10 A Yes.

11 Q And at the time of the defendant's arrest, how tall was
12 he?

13 A Five-seven.

14 Q And how much did he weigh?

15 A 180 pounds.

16 Q What was his address?

17 A 9275 Fort Hamilton Parkway, Apartment B5E, Brooklyn, NY.

18 Q And to your knowledge, what if anything is located at that
19 address?

20 A That is the housing for the BOP staff. They call it
21 Dayton Manor. It's where BOP staff members live.

22 Q And what was the defendant's age at the time of his
23 arrest?

24 A Forty-seven.

25 Q Did he provide a phone number?

Direct - Riley - Shihata

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1 A Yes. 718-490-8719.

2 Q Now, at the time of the defendant's arrest, did you
3 inventory any personal property for him?

4 A Yes, I did.

5 Q And what was the purpose of that?

6 A Because after he's arrested he has to be processed through
7 the court system, and he's not allowed to have any personal
8 property with him. So I do an inventory of his property for
9 accountability, and I just make a list of everything that I'm
10 going to hold on to for him.

11 MS. SHIHATA: I'm showing the witness only what's
12 been marked for identification as Government Exhibit 238.

13 BY MS. SHIHATA:

14 Q Do you recognize this exhibit?

15 A Yes, I do.

16 Q What is it?

17 A Those are two credit cards or debit cards that was in Lt.
18 Martinez's property.

19 Q In his possession at the time of his arrest?

20 A Yes.

21 MS. SHIHATA: I move to admit Government Exhibit 238.

22 MR. RICCO: Without objection.

23 THE COURT: It's admitted.

24 (Government Exhibit No. 238 admitted into evidence.)

25 MS. SHIHATA: And if we could publish it to the jury?

Direct - Riley - Shihata

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1 BY MS. SHIHATA:

2 Q Looking at the card on the bottom of the page, what type
3 of card is it?

4 A It's a Visa debit card from USAA.

5 Q And whose name is it in?

6 A Carlos Martinez.

7 MS. SHIHATA: I'm showing the witness only what's
8 been marked for identification as Exhibit 243.

9 BY MS. SHIHATA:

10 Q Do you recognize this exhibit?

11 A Yes, I do.

12 Q And what is this exhibit?

13 A It's a map of the Brooklyn area that includes the MDC
14 Brooklyn, the defendant's home, and the Rite Aid store located
15 at 6423 Fort Hamilton Parkway.

16 MS. SHIHATA: I move to admit Government Exhibit 243.

17 MR. RICCO: Without objection, Your Honor.

18 THE COURT: It's admitted.

19 (Government Exhibit No. 243 admitted into evidence.)

20 MS. SHIHATA: And I also move to admit Government
21 Exhibit 243-1, which is a board version of this same exhibit.

22 MR. RICCO: Without objection.

23 THE COURT: It's admitted.

24 (Government Exhibit No. 243-1 admitted into evidence.)

25 MS. SHIHATA: May I publish it to the jury?

Direct - Riley - Shihata

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1 THE COURT: Go ahead.

2 BY MS. SHIHATA:

3 Q I just wanted to go back for a moment. Earlier, you
4 testified regarding an injury that the defendant -- that Lt.
5 Martinez reported, an injury he sustained to his hand in April
6 -- on April 7th, 2016. Do you recall that?

7 A Yes.

8 Q And just to be clear, was that -- did that injury relate
9 to an incident that happened outside of the MDC?

10 A Yes.

11 (Pause.)

12 Q Now, are you familiar with an area known as the Special
13 Housing Unit?

14 A Yes, I am.

15 Q And have you visited the special housing unit for female
16 prisoners at the MDC?

17 A Yes, I have.

18 Q And when was the last time you visited it?

19 A Two days ago, on Sunday.

20 Q And can you describe for the jury what it looks like?

21 A First you have to go through security to get into the SHU
22 area. And inside the SHU are just a row of cells, cell doors.
23 And I viewed one cell. They open up the secure door and it's a
24 small cell, maybe five feet by 10 feet, with a metal bed
25 secured to the ground. And in the corner there is like a

Direct - Riley - Shihata

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1 combination toilet bowl/sink, made of stainless steel.

2 Q And in a moment I'm going to show the witness only what's
3 been marked for identification as Government Exhibits 245A
4 through 245G.

5 And generally speaking, what are these photographs you
6 just reviewed? What are they of?

7 A It's the SHU of the cell and the recreational area.

8 Q And this is the SHU for the female inmates?

9 A Yes.

10 MS. SHIHATA: I move to admit Government Exhibits
11 245A through 245G.

12 MR. RICCO: Without objection.

13 THE COURT: Admitted.

14 (Government Exhibit Nos. 245A through 245 G admitted into
15 evidence.)

16 BY MS. SHIHATA:

17 Q Starting with Government Exhibit --

18 MS. SHIHATA: And I'd like to publish them.

19 BY MS. SHIHATA:

20 Q Starting with 245A, what does this show?

21 A This is the door to one of the SHU cells.

22 THE COURT: What does SHU stand for? Special Housing
23 Unit?

24 THE WITNESS: Special Housing Unit.

25 BY MS. SHIHATA:

Direct - Riley - Shihata/Cross-Riley-Ricco

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1 Q And turning now to Government Exhibit 245B, what is this?

2 A This is the inside of the cell with the metal bed that's
3 secured to the ground.

4 Q And the kind of sliver looking thing in the back wall,
5 what is that?

6 A It's a very small window that you can see outside, but
7 it's very narrow. Maybe two inches.

8 Q Showing you now what's in evidence as Government Exhibit
9 245C. What does this show?

10 A This is the bed is to the right, and to the left is the
11 toilet with the sink combination.

12 Q And just to be clear, is your understanding that when this
13 cell is occupied that it includes a thin mattress on the bed?

14 A Yes.

15 Q And now, I'm showing you what's in evidence as Government
16 Exhibit 245D. What does this show?

17 A This is a picture of the cell from the reverse angle, so I
18 had my back to the rear wall. So this is the door that you
19 exit the SHU, the SHU cell from.

20 Q And I'm showing you what's in evidence as Government
21 Exhibit 245E. What is this?

22 A These are the recreational cages. There is actually three
23 separate cages. The SHU female inmates can go out for
24 recreation, once, one hour a day.

25 Q And I'm showing you what's in evidence as Government

Cross - Riley - Ricco

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1 Exhibit 245F. What is this?

2 A This is one of the doors that go to the recreational cage.

3 Q And finally, I'm showing you what's in evidence as

4 Government Exhibit 245G. What is this?

5 A This is a photo of the recreational cage from the inside.

6 So standing again, with my back toward the back of the wall,

7 and it's facing outward.

8 MS. SHIHATA: No further questions, Your Honor.

9 (Pause.)

10 CROSS-EXAMINATION

11 BY MR. RICCO:

12 Q Good afternoon, Special Agent Riley.

13 A Good afternoon.

14 Q The last set of photographs that we saw, 245A to 245G, I
15 think you told the jury this was the special housing unit
16 located inside the Metropolitan Detention Center. Is it?

17 A Yes.

18 Q Now, during the course of this investigation, you became
19 aware that Maria had never been up there, correct?

20 A Correct.

21 Q So what the jury just saw were photographs of a location
22 that the -- that Maria had never been to, right?

23 A No, she wasn't, but there were other --

24 Q I'm asking you a question. Was Maria ever there? That's
25 my question.

Cross - Riley - Ricco

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1 A She was never there.

2 Q And so the photographs that we saw are events and
3 depictions of something that Maria never saw, as far as your
4 investigation is concerned?

5 A She never saw it, no.

6 Q That's my question. She never saw, correct?

7 A Yes.

8 Q We're going to get to what people say in a minute. Now,
9 on the chart that was on the board, Chart 242 where all of the
10 different things were listed, I think you said that that was
11 the relevant set of events, right?

12 A Yes.

13 Q That was the word that you used? Relevant to your
14 investigation, right?

15 A Correct.

16 Q Okay. Now, you also told us, for example, that you asked
17 Officer, SIS Officer Rodriguez to dial your phone, right?

18 A Yes.

19 Q And he did, right?

20 A Yes.

21 Q And you wanted to see something there, right? That's why
22 you asked him to do it, right?

23 A Correct.

24 Q You wasn't asking him to do it just to pass the time of
25 day, right?

1 A No.

2 Q You wanted to see what number came up when he called,
3 right?

4 A Right.

5 Q You were trying to recreate, in your mind, events that may
6 have happened during the course of this investigation. Right?

7 A No, I was just trying to confirm if when you dial a number
8 from the MDC specifically, his extension to an outside cell
9 phone, would it be the 5000 number.

10 Q Okay. But I think we're saying the same thing
11 differently. In other words, you didn't know what was going to
12 happen until it did, right?

13 A Well, I kind of already knew because I get a lot of calls
14 from the MDC, and it often comes up as 5000. But we just
15 wanted to confirm that when you dial from specifically that
16 5129 extension, that it still comes up 5000.

17 Q You wanted to make sure, right?

18 A Correct.

19 Q Because you wanted to testify here and be accurate, right?
20 Right?

21 A Yes.

22 Q Now also, when 241 was on the board, you -- there was a
23 comparison of 241 to other exhibits, like 207, 206. You're
24 putting things together, right?

25 A I'm not exactly sure which exhibits you were referring to,

Cross - Riley - Ricco

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1 but we reviewed them. I'm not sure which exhibits you're
2 referring to, so if you want to show them to me then I'll be
3 able to tell you if we were putting them together.

4 Q Sure.

5 MR. RICCO: Do we have 241? Okay. Thank you.

6 BY MR. RICCO:

7 Q This is 241, right? You told us that 241 was the result
8 of -- let me see if I can better focus on that. 241 was the
9 result of looking at charts 207 and 206, right?

10 A Yes.

11 Q Putting things together, right?

12 A Yes.

13 Q And these events are part of your relevant time line,
14 right?

15 A Yes.

16 Q Chart 242, right?

17 A Correct.

18 Q All right. Now you also showed us a chart of the Rite-Aid
19 and the location of the Rite-Aid, correct?

20 A The map?

21 Q Yeah, the map.

22 A Yes, the map, and chart.

23 Q Uh-huh. And the credit card, right?

24 A Yes.

25 Q That was used to purchase something at the Rite Aid,

Cross - Riley - Ricco

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1 right?

2 A Correct.

3 Q Now, did you go out during the course of your
4 investigation and purchase the item that's set forth in the
5 evidence as the Plan B One-Step, purchased from Rite Aid? Did
6 you purchase one?

7 A Yes, I did.

8 Q Took a photograph of it, didn't you? I'd like to approach
9 with Exhibit 240.

10 A I, I didn't take the photograph of it.

11 Q Okay. Take a look at 240. Recognize it?

12 A Yes.

13 Q Now there was testimony that the pill container from the
14 item that was purchased from Rite-Aid was inside of inmate ID
15 plastic -- a plastic sleeve issued by MDC, right?

16 A Right.

17 Q Have you ever seen one, plastic sleeves for MDC?

18 A I have when I've, I've visited there.

19 MR. RICCO: Your Honor, I'd like to have this marked
20 for identification purposes as Defendant's B.

21 (Defendant's Exhibit B marked for identification.)

22 BY MR. RICCO:

23 Q I'm going to ask you if you recognize what's in front of
24 you as Defendant's B?

25 A It's an ID holder.

Cross - Riley - Ricco

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1 Q From who?

2 A I don't, I don't know.

3 Q Have you ever seen one like that before?

4 A No.

5 Q Okay. The Plan B merchandise that you purchased, did you
6 take out the inside pill container to see if it fit within an
7 ID folder at MDC? Did you do that?

8 A No, I didn't see if it would fit. I've taken the pill out
9 of the container of the packaging, but I did not see if it
10 would fit in the ID.

11 Q Did you take a photograph? Did anybody on the team take a
12 photograph of the inside pill packaging? Yes or no?

13 A Not that I know of.

14 Q Is 240, that's in front of you, the outside packaging?

15 A Yes.

16 MR. RICCO: I move 240 into evidence.

17 MS. SHIHATA: No objection.

18 THE COURT: Admitted.

19 (Government Exhibit No. 240 admitted into evidence.)

20 BY MR. RICCO:

21 Q Do you -- I want to ask you a couple of questions about,
22 as a joint case agent in this case, have you reviewed the
23 interviews conducted between the investigators and the
24 prosecutors who were present, and Maria? Follow the question?

25 A Yes.

Cross - Riley - Ricco

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1 THE COURT: That was, did you follow the question.

2 MR. RICCO: Yeah, thank you, Judge.

3 BY MR. RICCO:

4 Q You follow the question. So the question was, did you do
5 it? Did you review it?

6 A Yes, I've -- I've briefly reviewed them, yes.

7 Q All right. And in those -- during those interviews
8 questions were asked about that pill, correct?

9 A Yes.

10 Q And Maria referred to that pill as the Plan B pill during
11 those interviews. Isn't that correct?

12 A Yes.

13 Q You also had an opportunity, did you not, to review the
14 Grand Jury testimony -- well, withdrawn. You had the
15 opportunity to review prior testimony --

16 MS. SHIHATA: Objection.

17 MS. ARGENTIERI: Can we approach, Judge?

18 MS. SHIHATA: Can we approach, Your Honor?

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Sidebar

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1 (Conference held at sidebar.)

2 MS. ARGENTIERI: Judge, the basis for our objection
3 is for in order for a case agent to admit prior statements of
4 witnesses, even a witness who's testified, there has to be a
5 hearsay exception, for example.

6 The fact that either you're impeaching the witness
7 because it's prior inconsistent statement, or something like
8 that. And I don't think Mr. Ricco has laid the foundation for
9 the introduction of prior statements by any of our witnesses,
10 or introduction of prior Grand Jury testimony.

11 MR. RICCO: Judge, these questions go to the
12 investigative steps that were taken, based upon the interviews
13 that she said was conducted. The Government put in a chart of
14 relevant information based upon the investigation. These are
15 questions asked to investigative steps and how they arrived at
16 their relevant chart. They've not been introduced. That's the
17 purpose of it being introduced, investigative.

18 MS. ARGENTIERI: Judge, under that theory at every
19 trial, the case agent could testify about the statements of
20 every witness on the stand, and that's just not the standard.
21 Either the witness had to be impeached on the direct case and
22 had the opportunity to be confronted with the statement.

23 And then you could offer the statement through the
24 case agent, or through someone who is present for the
25 statement. You can't just, to show investigative steps,

1 introduce a bunch of hearsay evidence of witnesses who have
2 testified.

3 It seems to me a back door to get into some facts
4 that maybe weren't elicited to the witnesses. I don't know.
5 But I don't think it's appropriate, and I really don't want to
6 have to object like every question, because it's improper and
7 it might lead the jury to believe, you know, that someone --

8 THE COURT: I think you don't want that either.

9 MS. ARGENTIERI: Well, I know, but that's a fair --
10 that's a fair concern.

11 THE COURT: No, I agree with you. I didn't say it
12 wasn't.

13 MS. ARGENTIERI: Okay. All right.

14 THE COURT: I'm just completing your thought.

15 MS. ARGENTIERI: I appreciate that.

16 MR. RICCO: Judge, prior inconsistent statements is
17 one method to get an inconsistency before the jury. This is
18 not being offered for a consistency.

19 Under *Chambers v. Mississippi*, defendant has a right
20 to challenge the investigative measures of this case. Now in
21 their direct case, this agent testified that she conducted an
22 investigation by interviews, documents, she went to locations,
23 she made purchases, and I'm asking her about these
24 investigative steps and how she arrived at the conclusion of
25 their chart that's in evidence that has the relevant

1 investigative chronology.

2 MS. ARGENTIERI: The chart we put in is of documents
3 that were independently admissible as business records. No
4 witness statements are contained in any of those charts. We
5 didn't elicit what Maria said, or what any of the witnesses
6 said as part of the investigation, because that would have been
7 hearsay. And so --

8 THE COURT: Well --

9 MS. ARGENTIERI: And I don't think the defendant
10 should be able to do it because he can ask what investigative
11 steps she took. The substance of the witness statements are
12 not relevant to that.

13 MR. RICCO: Well, so far I've just asked her, did she
14 have an opportunity to review the Grand Jury testimony in
15 connection with her investigation.

16 THE COURT: Well, what is she going to answer?

17 MR. RICCO: She's going to say yes.

18 THE COURT: Would she say yes or not?

19 MS. ARGENTIERI: I don't know. She may have reviewed
20 it, she may not have. But what's the question after that?

21 THE COURT: Why are we wasting time? You might as
22 well just ask her.

23 MS. ARGENTIERI: But, Judge, do we ask her --

24 THE COURT: Could you step outside, ladies and
25 gentlemen?

Sidebar

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1 MS. ARGENTIERI: I don't mean to waste time, Judge,
2 but --

3 THE COURT: (Inaudible.)

4 MS. ARGENTIERI: Okay.

5 (End sidebar conference.)

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Sidebar

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1 THE CLERK: Could you all step outside, please?

2 Thank you.

3 (Jury exits the courtroom.)

Cross - Riley - Ricco

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1 (Jury not present.)

2 THE CLERK: Please be seated.

3 BY MR. RICCO:

4 Q Special Agent Riley, did you have an opportunity to review
5 the -- there's no jury present -- the Grand Jury testimony with
6 respect to Maria prior to, to then?

7 A No, I didn't.

8 Q Okay. There you go.

9 THE COURT: Okay.

10 MS. SHIHATA: I just think it's to the extent that
11 this is a theme that's going to be coming up with other
12 questions, maybe I'm wrong that it's not, but --

13 THE COURT: It won't.

14 MR. RICCO: Judge, I would like to conduct my
15 examination without these kind of like lengthy interruptions.

16 THE COURT: Okay. You (indiscernible).

17 MR. RICCO: The witness said no, I'm ready to move
18 on. I'd like to finish my examination.

19 THE COURT: Let's bring the jury back in.

20 MR. RICCO: Thank you.

21 THE WITNESS: Okay.

22 THE COURT: Mr. Ricco, this is to answer your
23 question.

24 MR. RICCO: Yes.

25 THE COURT: Are you suggesting that Maria said

Cross - Riley - Ricco

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1 anything different in the Grand Jury than she said here in
2 court?

3 MR. RICCO: Yeah.

4 THE COURT: And you didn't elicit it in the cross-
5 examination?

6 MR. RICCO: Did not.

7 THE COURT: And that was for strategic purpose?

8 MR. RICCO: Yes, sir. Yes, it was, Judge. I'm okay
9 with the answer, Judge.

10 THE COURT: Okay. Bring the jury in.

11 (Pause.)

12 COURT OFFICER: Judge, because a break started, a few
13 of the jurors stepped into the restroom, so that's just
14 finishing up.

15 THE COURT: Why don't you use the restroom if you
16 need to.

17 MS. ARGENTIERI: Thank you, Judge.

18 (Recess from 3:45 until 3:49 p.m.)
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Cross - Riley - Ricco

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1 THE CLERK: Are we ready, counsel?

2 MR. RICCO: Yes, we are.

3 THE COURT: By the way, I think as a general matter
4 he can cross her on how she conducted her investigation and
5 what she did. Specific issues like you raised may be a
6 different question but I don't think there was anything wrong
7 with this last question.

8 MS. SHIHATA: Judge, I think just our concern is to
9 the extent that Mr. Ricco elicits a prior statement from a
10 witness, that's the concern, and it ended up not happening with
11 that question.

12 THE COURT: We've established that.

13 MR. RICCO: Okay.

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Cross - Riley - Ricco

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1 (Jury enters.)

2 CROSS EXAMINATION (Continued)

3 BY MR. RICCO:

4 Q Good afternoon, Agent Riley.

5 A Good afternoon.

6 Q In connection with your investigation, did you have an
7 opportunity to review prior testimony, grand jury or any other
8 proceedings, involving Maria?

9 A Yes, I did.

10 MR. RICCO: Hold on one second, Your Honor.

11 (Pause.)

12 MR. RICCO: Your Honor, I think -- I think -- let me
13 rephrase the question. I don't want to confuse the witness.

14 Q Had you had an opportunity to review prior testimony at a
15 grand jury proceeding of Maria?

16 A Yes, I did.

17 Q Okay. All right.

18 We put up one chart that you had an opportunity to review
19 and I think you gave you some testimony this afternoon about
20 it, was chart 207, and that was Lt. Martinez's daily activity
21 chart. Do you remember that chart?

22 A Yes.

23 Q And some extractions from that chart ended up in 242,
24 those dates being April 15th and April 16th, right?

25 A Yes.

Cross - Riley - Ricco

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1 Q Now do you have a recollection of the days of the week for
2 April, 2016?

3 A No, I don't.

4 MR. RICCO: Your Honor, I'd like to have this exhibit
5 marked as Defendant's C.

6 (Defendant's Exhibit C marked for identification.)

7 (Pause.)

8 MR. RICCO: I'm sorry, Your Honor. We're trying to
9 not have to duplicate. With the number of exhibits it gets --

10 (Pause.)

11 MR. RICCO: 233.

12 (Pause.)

13 BY MR. RICCO:

14 Q 233 in evidence is a calendar of 2016, yes.

15 A Yes.

16 Q And we know, for example, the date from a review of the
17 records that Maria was transferred from the MDC into ICE
18 custody. Isn't that correct?

19 A Yes.

20 Q And that was April 29th, 2016, right?

21 A Yes.

22 Q Now the weekend before that, that Saturday would have been
23 April 23rd. Isn't that correct?

24 A Yes.

25 Q Sunday would have been the 24th?

1 A Yes.

2 Q Any record that Lt. Martinez was working on those dates?

3 A Can I look at the daily assignment roster?

4 Q Yes. 207.

5 (Pause.)

6 A So April 23rd, 2016 --

7 Q Yes.

8 A -- is his day off.

9 Q And April 24th?

10 A April 24th, 2016 he's on annual leave.

11 Q He's not at the jail, is he?

12 A No, he's off and on leave.

13 Q Okay. And you have no information or belief he was at the

14 jail.

15 A No, I don't.

16 Q Now from 207 we could determine the days that he was the

17 East Wing rec officer, right? That would be April 15th and

18 April 16th, right?

19 A The activities lieutenant?

20 Q I'm sorry. I misspoke. Forgive me.

21 A Yes.

22 Q Take a look at the chart. And he is not in that position

23 on any other day for the remainder of that month. Isn't that

24 correct?

Redirect - Riley - Shihata

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1 A See him listed on the 16th, the 15th and that's it as
2 assigned East activities lieutenant.

3 Q For the entire month of April, 2016, correct?

4 A Correct.

5 MR. RICCO: No further questions. Thank you very
6 much.

7 REDIRECT EXAMINATION

8 BY MS. SHIHATA:

9 Q Now, Agent Riley, on cross examination defense counsel
10 asked you about Defense Exhibit B --

11 MR. RICCO: It's not in evidence.

12 MS. SHIHATA: Oh, I'm sorry.

13 MR. RICCO: It was just for identification. She
14 couldn't ID it, so I couldn't put it in.

15 THE CLERK: It was not public.

16 MR. RICCO: It wasn't published.

17 THE CLERK: It's also not public.

18 MS. SHIHATA: Do you have an objection to be it being
19 in evidence?

20 MR. RICCO: If the witness -- yes, if the witness
21 can't identify it. Okay.

22 BY MS. SHIHATA:

23 Q Do you know -- I'm showing the witness only what's been
24 marked for identification as Government Exhibit 240-A.
25 Do you recognize this exhibit?

Redirect - Riley - Shihata

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1 A Yes, I do.

2 Q And how do you recognize that?

3 A This is the Plan B package that I purchased at the Rite-
4 Aid.

5 Q And how do you know it's the package you purchased?

6 A Because on the back of the package I put my initials and
7 the date that I purchased it on January --

8 Q And this particular Plan B pill, when did you purchase it?

9 A On January 15th, 2018.

10 MS. SHIHATA: I move to admit Government Exhibit 240-
11 A.

12 MR. RICCO: I'd like to take a look at it before it
13 goes in.

14 (Pause.)

15 MR. RICCO: I have no objection to it going in.

16 THE COURT: It's admitted.

17 (Government Exhibit No. 240-A received into evidence.)

18 MS. SHIHATA: And I'm just publishing it for the
19 jury.

20 BY MS. SHIHATA:

21 Q And where specifically did you purchase this Plan B One
22 Step pill?

23 A I purchased it at the Rite-Aid at 6423 Fort Hamilton
24 Parkway in Brooklyn.

25 Q And did you open it earlier?

Redirect - Riley- Shihata/ Recross - Riley - Ricco

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1 A Yes, I did.

2 Q And can you describe what this is made out of? Is this
3 cardboard?

4 A Yes, it is.

5 Q Were you able to separate the pill portion from the rest
6 of the packaging?

7 A Yes.

8 Q Could you do so?

9 Are you able to fold what you just ripped off?

10 A Yes, I can.

11 Q Can you do so?

12 A Sure.

13 Q This is what you just folded up?

14 A Yes, it is.

15 MS. SHIHATA: Nothing further.

16 RECROSS EXAMINATION

17 BY MR. RICCO:

18 Q Agent Riley --

19 A Yes.

20 Q Can you do us a favor?

21 A Sure.

22 Q For the jury. Can you take your thumb and push that pill
23 out of there, please. Direct it at the jury.

24 (Pause.)

25 A It came right out as soon as you pushed it, didn't it?

Recross - Riley - Ricco

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1 THE COURT: What came out? I didn't see.

2 MR. RICCO: I'm sorry.

3 Q The pill came right out as soon as you pushed it. Isn't
4 that right?

5 A Yes, I just pushed it and it comes through.

6 Q You didn't have to destroy the packaging for the pill to
7 come out, did you?

8 A Not this packaging, no.

9 Q Do you know of any other packaging that the Plan B One
10 Step pill comes in?

11 A No.

12 Q And by the way, the words written on that inside card say,
13 "Plan B One Step," just like the outside of the package,
14 doesn't it?

15 A On this side?

16 Q Yes.

17 A Yes. "Plan B Emergency Contraceptive. One Tablet, One
18 Step."

19 Q But there's no question Plan B is there, right?

20 A Yes. Plan B.

21 MR. RICCO: Okay. Thank you very much and remind me
22 to put the pill back, just so it's -- okay. Thank you.

23 FURTHER REDIRECT EXAMINATION

24 BY MS. SHIHATA:

25 Q Is there other writing on the pill packaging that you

Further Redirect-Riley-Shihata/Further Recross-Riley-Ricco 894

1 ripped off?

2 A Yes, there is.

3 Q What else does it say?

4 A "Plan B One Step Emergency Contraceptive. One tablet, one
5 step." And then there's three bullet points. It says "The
6 sooner you take it, the more effective it will be. Take as
7 soon as possible, within 72 hours, (3 days) after unprotected
8 sex. Will not harm an existing pregnancy. Plan B One Step.
9 One tablet 11 levonorgestrel (ph) 1.5 milligram, mg."

10 Q And just to be clear, you bought this a few days ago in
11 2018, correct?

12 A Yes.

13 Q And do you know what the packaging -- precisely what the
14 packaging looked like on December 13th, 2015?

15 A No, I don't.

16 FURTHER RECROSS EXAMINATION

17 BY MR. RICCO:

18 Q And nor did you make any inquiry with Rite-Aid to
19 determine whether or not it had changed?

20 A No, I didn't.

21 MR. RICCO: No further questions. Thank you.

22 MS. SHIHATA: No, further questions.

23 (Witness excused.)

24 MS. SHIHATA: At this time, Your Honor, we'd like to
25 move into evidence as certified business records, Government

Sidebar

895

1 Exhibit 217. And I can just show them -- I'll show --

2 (Pause.)

3 MR. RICCO: That's without objection, Your Honor.

4 THE COURT: It's admitted.

5 (Government's Exhibit No. 217 received into evidence.)

6 MS. SHIHATA: The government rests.

7 THE COURT: Okay. You want to come up to the
8 sidebar?

9 (Sidebar conference.)

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Sidebar

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Sidebar

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1 THE COURT: You want to make (inaudible).

2 MR. RICCO: We're moving pursuant to Rule 29A,
3 Federal Rules of Criminal Procedure, for a judgment of
4 acquittal on the grounds that the evidence presented by the
5 government during the prosecution of its direct case was
6 insufficient to sustain a conviction of the defendants on
7 Counts 1, 5, 9, 13, 17, deprivation of civil rights counts.
8 That the defendant's conduct resulted in aggravated sexual
9 abuse of a victim and to Counts 2, 6, 10, 14, 18, aggravated
10 sexual abuse causing (inaudible) to engage in sexual acts by
11 threatening her and Counts 4, 8, 12, 16 and 20, that the
12 defendant engaged in sexual acts (inaudible) who was under the
13 custody of BOP authority.

14 THE COURT: Well, didn't I get rid of the
15 threatening?

16 MS. SHIHATA: No. Judge, sexual abuse in a federal
17 prison -- there's four sets of charges. There's civil rights
18 charges under 202, the aggravated (inaudible) force and you did
19 get rid of --

20 THE COURT: Fear. I knew I got rid of something --

21 MS. SHIHATA: And then the sexual abuse in a prison
22 charge is the fear charge and then sexual abuse of a ward.

23 THE COURT: I'm going to deny the motion. Okay.

24 You have a witness?

25 MR. RICCO: I do and I think that -- I'll see who

1 wants to be heard, briefly.

2 MS. ARGENTIERI: Well, I hope it's brief.

3 MR. RICCO: Oh, we have one witness and the
4 prosecutor wants to be heard briefly. Sorry, Your Honor.

5 MS. ARGENTIERI: Their witness is a -- I have PTSD
6 from this microphone situation.

7 Their witness is Matt Kluger who is Maria's lawyer.
8 Not knowing what Mr. Kluger is really going to testify to, I
9 think there are concerns about his testimony, including --
10 first of all I think Maria -- I'm not sure what he's going to
11 testify to, so this is very difficult, Judge, but Maria
12 admitted that did not tell her or did not -- in the underlying
13 criminal case acknowledge the full extent of the criminal
14 conduct and, in fact, she's the one who told us that and she
15 testified to that.

16 So I don't think that Mr. Kluger could be called
17 properly to impeach her because there's nothing to impeach her
18 on.

19 So we haven't received any witness statement
20 material. I really don't know the subject matter substantively,
21 and I'd rather not have that play out in front of the jury, for
22 obvious reasons.

23 MR. RICCO: Your Honor, the calling of a former
24 client is a very serious matter. It involves a New York Code
25 of Professional Responsibility.

1 Matthew Kluger is not being called to discuss
2 anything covered by confidentiality. He's not being called to
3 discuss anything related to attorney/client privilege. Not by
4 a long shot.

5 He is being called to testify whether he received a
6 phone call from an individual. He'll be answering that question
7 yes or no. He's not going to testify what he communicated to
8 his client. He's not going to testify what his client
9 communicated to him. He's going to be pitted against -- in
10 terms of the classic breach of confidentiality and, of course,
11 confidentiality does extend to matters outside of what the
12 client says.

13 But in this instance what he's testifying to is not
14 under the definition of confidentiality. He's testifying that
15 he did not receive a phone call.

16 MS. ARGENTIERI: I question, Judge, the relevance of
17 that testimony. I looked at --

18 THE COURT: Well, I don't know what phone he didn't
19 received.

20 MS. ARGENTIERI: Well, my --

21 THE COURT: Maybe you can guess?

22 MS. ARGENTIERI: I can guess. I've been paying some
23 attention to Mr. Ricco, and I think that Mr. Ricco's going to
24 try to elicit that -- I can't remember the lawyer's name.

25 MR. RICCO: Kluger.

Sidebar

900

1 MS. ARGENTIERI: Kluger did not receive a phone call
2 from Deyberto Torres or someone associated with him.

3 But Maria testifies and Maria's testimony was that
4 the other lawyer received a phone call, and that it wasn't
5 Kluger.

6 So I don't think that this testimony in any way
7 impeaches her and I don't really see how it's relevant to her
8 or issues of credibility that are before the jury.

9 MR. RICCO: Judge, that was not the witnesses
10 testimony, and we very carefully looked at this because of all
11 of the implications for an attorney to be testifying in this
12 circumstance.

13 And he is directly responding to one single question,
14 without violating confidentiality, anything that was said or
15 discussed with the client.

16 THE COURT: But she's now objecting on different
17 grounds. She's saying it's not relevant.

18 MR. RICCO: Well, (inaudible) Judge, because this
19 jury has to decide on what basis do they determine the
20 credibility of the witnesses.

21 And this witness has said she's given reasons why she
22 withheld information from her lawyer. And why she has this
23 asylum application that has this stuff about all these horrific
24 acts that she said happened to her are still haunting her.

25 THE COURT: Who's this -- go ahead. Finish.

Sidebar

901

1 MR. RICCO: The lawyer -- his name is Matt Kluger.

2 He's on the panel.

3 THE COURT: No, no. Who is this -- the person who he
4 didn't get the call from?

5 MR. RICCO: He doesn't exist.

6 MS. ARGENTIERI: That begs the question of how --

7 MR. RICCO: It doesn't.

8 MS. SHIHATA: Judge it --

9 MS. ARGENTIERI: (Inaudible).

10 MR. RICCO: Well, I'm not proving that. My proof is
11 not that he -- the judge asked me who it is. It's a person who
12 she said is Deyberto Torres. I don't have no reason to believe
13 that person even exists, but that's not the subject of my
14 examination of this witness.

15 MS. ARGENTIERI: But I -- I think that if you could
16 give me a second with Mr. Ricco and I could look at the
17 testimony, because it seems to me if she said the other lawyer
18 received it, then we could resolve it on those grounds. Just
19 give us a second to check, Judge.

20 THE COURT: Absolutely.

21 MS. ARGENTIERI: Okay. Thank you.

22 (Pause.)

23 MS. ARGENTIERI: I'm having a hard time finding it,
24 but I could find it electronically. If we could just take a
25 five minute break to find it.

Sidebar

902

1 THE COURT: He said he's giving it to --

2 MS. ARGENTIERI: Not -- there's another -- I believe
3 there's another reference where she says it's the other lawyer
4 on cross examination. I saw it yesterday. I can't find it in
5 this exact second, but if I can turn my computer on, I could
6 search for it.

7 MR. RICCO: I don't have any objection to this -- I'm
8 not trying -- I don't have any problem with it.

9 (End sidebar conference.)

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1 THE COURT: All right. We have to find something in
2 the transcript, ladies and gentlemen. I'm sorry to ask you to
3 take another break.

4 (Jury exits.)

5 (Recess from 4:20 p.m. until 4:25 p.m.)

6 (Sidebar conference.)

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Sidebar

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1 (Conference at sidebar.)

2 THE CLERK: The jury's not here so we can do it up
3 front.

4 MS. ARGENTIERI: We can rest. We can rest here.

5 THE COURT: We could talk our normal voice.

6 My voice is inaudible in any event, but --

7 MR. RICCO: Judge, the witness is being called to
8 deal with these questions around the safety valve proffer
9 session.

10 THE COURT: Could I see it?

11 MR. RICCO: Yes, Judge. It's tiny, tiny, but -- it
12 starts with the yellow.

13 (Pause.)

14 THE COURT: Okay. When was this given?

15 MS. ARGENTIERI: I'm sorry?

16 THE COURT: When was this testimony?

17 MR. RICCO: This as the direct examination on January
18 9th.

19 MS. ARGENTIERI: So on cross Mr. Ricco was asking her
20 about her interactions with her criminal lawyer, who's the guy
21 in the hallway.

22 MR. RICCO: I was asking about the story that she was
23 telling (inaudible) --

24 MS. ARGENTIERI: That's correct.

25 MR. RICCO: That's different.

1 MS. ARGENTIERI: That's correct.

2 MR. RICCO: I wasn't asking about --

3 THE COURT: Let me --

4 MS. ARGENTIERI: Well, it says --

5 THE COURT: Where do you want me to start reading?

6 MS. ARGENTIERI: So she gave -- they're talking about
7 the sentencing. "She gave you the opportunity to tell the
8 truth. You didn't. It was Maria. You decided not to be
9 truthful. Yes, I was going to put my family in danger," blah,
10 blah, blah. I don't mean to blah, blah you.

11 MR. RICCO: You can blah, blah me.

12 MS. ARGENTIERI: "You got what you wanted, right?

13 Right? Yes. Judge" -- I can't read it upside down, but
14 something about below ten years. "Yes, yes. And by the way,
15 you also wasn't honest with your own lawyer. Isn't that
16 correct? No, that was my -- we're talking about my family's
17 life. The other lawyer told me that they were calling him."

18 And the way that I read that, that is not her
19 criminal lawyer, Matthew Kluger and I think if we were going to
20 impeach her on that there really should have been a follow up
21 question to clarify that.

22 As it stands right now, I don't think there's any
23 sufficient to impeach Maria by calling her own lawyer.

24 MR. RICCO: What about her testimony when it says I
25 wasn't making calls to the lawyer? He was handling my criminal

Sidebar

906

1 case. He was sending people to my house. I was in jail.

2 She's specifically talking about he was making calls
3 to the lawyer who was handling my criminal case. That lawyer
4 is Matthew Kluger.

5 THE COURT: I'm going to allow it.

6 (End sidebar conference.)

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Direct - Kluger - Ricco

907

1 (Jury enters)

2 THE COURT: Mr. Ricco.

3 MR. RICCO: Yes. Your Honor, the defendants call
4 Matthew Kluger.

5 MATTHEW KLUGER, DEFENDANT'S WITNESS, SWORN

6 DIRECT EXAMINATION

7 BY MR. RICCO:

8 Q State your name and county of residence.

9 A My name is Matthew Kluger. My county of residence is
10 Bergen County in New Jersey.

11 Q Would you tell the jury what you do for a living?

12 A I'm a criminal defense attorney.

13 Q How long have you been a criminal defense attorney?

14 A I've been a defense attorney for over 20 years.

15 Q When did you start?

16 A After law school. I went to law school in Manhattan and
17 then I was a public defender in New Hampshire for three years
18 and then I came back from New Hampshire and I was one of the
19 original attorneys at the Bronx Defender in the Bronx and then
20 around 2000/2001 I went into private practice.

21 Q So since 2001 you've been in private practice?

22 A Yes.

23 Q Do you have a federal criminal practice?

24 A I do.

25 Q Are you a member of any federal panels?

Direct - Kluger - Ricco

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1 A I'm a member of the Criminal Justice Act panel in the
2 Southern District of New York and I'm a member of the CJA
3 panel, which is the same thing, the Criminal Justice Act panel,
4 in the Eastern District of New York.

5 Q Okay. And what does that panel do, by the way?

6 A Those are panels of experience attorneys, federal
7 attorneys who have a lot of experience and are screened and if
8 they're accepted onto those panels, we represent people charged
9 in criminal cases in federal court that don't have the money to
10 afford their own attorney.

11 Q All right. Are you familiar with safety valve proffer
12 session?

13 A Yes.

14 Q What is a safety valve proffer session?

15 A So in federal law, and in federal sentencing, some cases,
16 particularly drug cases, have mandatory minimum sentences,
17 usually ten or five year mandatory minimum sentence, which
18 means that even if the judge wanted to, the judge wouldn't be
19 able to sentence generally around those sentences.

20 THE COURT: You mean below.

21 A Below. Right. Below those sentences. And safety valve
22 is a way if a client meets certain criteria, is a way for -- to
23 get around those mandatory minimum sentences.

24 Q And what is that criteria?

25 A Well, generally you'd have to meet certain criteria.

Direct - Kluger - Ricco

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1 You'd have to have a non-violent offense. You usually can't
2 have a prior criminal history. And if you do it has to be
3 something very minor, maybe a violation or something. You
4 can't have a gun. There can't be a gun involved in the case,
5 generally.

6 You also can't have a leadership role or a managerial
7 role, and you need to meet with the prosecutor and give a full,
8 honest description of your conduct in the case and any other
9 relevant conduct that may be relevant to your offense.

10 Q Okay. And do you -- and you mentioned that they have to
11 meet with the prosecutors.

12 A Yes.

13 Q Okay. Is that a requirement?

14 A It is a requirement. You need to meet with the government
15 and the government -- you need to be honest and you need to
16 give a full account of what happened in your offense.

17 And if the government believes you and if they accept
18 your version of events, then they will make a recommendation
19 that you satisfied that particular requirement of safety valve.

20 Q Okay. And in your general practice do you advise the
21 clients of the necessity to tell the truth before they go into
22 a safety valve session?

23 A Always.

24 Q Why?

25 A For a lot of reasons, but first of all, we always have to

Direct - Kluger - Ricco

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1 assume, and I always do, and a good lawyer assumes that the
2 government knows as much, if not more, about the case than we
3 do.

4 And if the client goes in there and lies and gets caught
5 lying, then not only won't they get safety valve, but there
6 could be other consequences, including lying to a federal
7 officer.

8 So it's very important that they tell the truth when they
9 go into the safety valve proffer.

10 Q Have you ever attended a safety valve proffer session
11 where you did not advise a client to tell the truth?

12 A Never.

13 Q Are client's permitted an opportunity to speak to the
14 court at the time of sentencing in every criminal case.

15 A They are afforded that opportunity.

16 Q Are clients obligated to speak at a criminal sentencing?

17 A No, they're not obligated.

18 Q Do you advise the clients of the necessity of telling the
19 truth when they're speaking to the court at the time of
20 sentencing?

21 A If they choose to speak to the court at the time of
22 sentencing, yes, we discuss that.

23 Q Why is that important?

24 A Because you can't lie to the court. You can't lie in
25 general. I'm an officer of the court. If I know a client of

Direct - Kluger - Ricco

911

1 mine is lying, I have ethical obligations to do something about
2 it.

3 Q Have you ever attended a sentencing where you did not
4 advise a client of being truthful, and candid, and honest when
5 addressing a United States District Court Judge?

6 A Never.

7 Q Did you represent a person known to these proceedings as
8 Maria?

9 A I did.

10 Q Did you represent her in her criminal case?

11 A Yes.

12 Q Did you advise her -- did you --- were you involved in the
13 case at the time of safety valve proffer?

14 A Yes.

15 Q Was there any other lawyer involved in the case at the
16 time of the safety valve proffer?

17 A No.

18 Q Did you take over the case from another lawyer?

19 A I did.

20 Q At the time you took over the case, was that well before
21 or after the safety valve proffer?

22 A It was well before the safety valve proffer.

23 Q And to your -- okay. Fine.

24 Now, question. Did you ever receive telephone calls from
25 any individual who made inquiries about your representation of

Direct - Kluger - Ricco

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1 Maria?

2 A No.

3 Q By the way, you're testifying here pursuant to a subpoena.

4 Isn't that correct?

5 A Yes.

6 Q Okay. Do you want to be here today?

7 A No.

8 Q Did you receive telephone calls from any persons
9 requesting the overall status of the case during your
10 representation of Maria before the United States District
11 Court?

12 A Well, there was one person that I had contact with.

13 Q And what was that person's name?

14 A Ramon.

15 Q And who was Ramon?

16 A My understanding was Ramon was a good friend of Maria.

17 Q Did you receive any threatening or suspicious calls from
18 anyone in relation to your representation of Maria?

19 A No.

20 Q Are you familiar with the ABA standards for the
21 representation of a criminal defendant in the New York State of
22 Professional Responsibility for Attorneys?

23 A I am.

24 Q What would happen if you personally had intentionally
25 violated those rules?

Direct - Kluger - Ricco

913

1 A I could be disbarred. I could lose my livelihood. I could
2 be censured or brought up on charges.

3 Q When an attorney verifies that the information in the
4 document is true and accurate, what does that mean?

5 A What it means is that the attorney has read the document
6 and is verifying that the information in the document is true.

7 Q Has any lawyer been in touch with you to get your files
8 from the criminal case?

9 Well, let me rephrase the question.

10 MS. SHIHATA: Objection.

11 THE COURT: He said he was going to rephrase the
12 question, so --

13 Q Has anyone asked for the criminal -- your files from the
14 criminal case where you represented her?

15 A No.

16 Q Have you had any substantive conversations with any lawyer
17 about the circumstances of your representation of Maria?

18 A No.

19 MS. SHIHATA: Objection.

20 THE COURT: Overruled.

21 MR. RICCO: I'm sorry.

22 THE COURT: I overruled the objection.

23 THE WITNESS: The answer is no.

24 Q As you sit here today, are you an officer of the court?

25 A I am.

Cross - Kluger - Shihata

914

1 Q Do you have a duty of honesty in all proceedings before
2 the court, tribunals and agencies where you represent a
3 criminal defendant?

4 A Yes.

5 MR. RICCO: I have no further questions. Thank you
6 very much.

7 CROSS EXAMINATION

8 BY MS. SHIHATA:

9 Q Just briefly, Mr. Kluger.

10 You testified regarding eligibility for safety valve,
11 correct?

12 A Yes.

13 Q And with respect to not having a prior criminal history,
14 that's not having any prior criminal convictions, correct?

15 A Generally.

16 Q Okay.

17 A I mean, you can't have more than one criminal history
18 point.

19 Q Right. And a criminal history point is determined by
20 convictions, correct?

21 A Yes.

22 Q Okay. And you are not an immigration lawyer, correct?

23 A No.

24 MS. SHIHATA: No further questions.

25

Redirect - Kluger - Ricco

915

1 REDIRECT EXAMINATION

2 BY MR. RICCO:

3 Q Did you meet with Maria after your criminal case was over?

4 A Yes.

5 MR. RICCO: No further questions. Thank you.

6 MS. SHIHATA: One moment, Your Honor.

7 (Pause.)

8 MS. SHIHATA: No further questions.

9 THE COURT: You can step down.

10 THE WITNESS: Thank you, Judge.

11 (Witness excused.)

12 MR. RICCO: The defense rests.

13 THE COURT: Okay, ladies and gentlemen. The defense
14 and the government rested too late for us to have summations
15 today because the summations will take two, two and a half
16 hours and I like to get them in all at once.

17 So we'll start at 10 o'clock. There's no more
18 witnesses so this time I think I'm telling the truth when I say
19 -- or I'm predicting correctly when I say tomorrow we will hear
20 summations and my instructions on the law.

21 Again, please don't discuss the case with anyone.

22 Please stay off the internet. Don't look anything up, for the
23 reasons I already explained to you.

24 Thank you for your attention and have a good evening.

25 (Jury excused.)

Colloquy

916

1 THE COURT: Okay. You want to come up? Everybody
2 can sit down or leave. Either one.

3 Have you corrected my instructions and the charge --
4 and the indictment.

5 MS. ARGENTIERI: Yes, Judge, we have.

6 THE COURT: I think that I didn't see the January
7 correction. January was not a -- was also one that covered the
8 whole month, or was included in something else. I have to take
9 a look.

10 MS. ARGENTIERI: Judge, I think the way that we went
11 about correcting it is that we made it clear that the counts --
12 we just did it in the counts related to December 15th --
13 December, 2015 to February, 2016. We made it completely clear
14 that that count -- and I'm sorry if I'm (inaudible) --

15 MR. RICCO: No, that's okay.

16 MS. ARGENTIERI: That that count did not include any
17 acts -- and I'll just look at the language really quickly.

18 So that, for example, on Count 9 at page 5, which
19 refers to an act that occurred between December 15th and
20 February, 2016, the way we define the date is on a specific
21 date unknown to the grand jury, not to include the dates of the
22 incidents charged in Counts 5 and 13.

23 So we included both December 13th and the January,
24 2016 unspecified date in that one count.

25 THE COURT: I know, but I --

Colloquy

917

1 MS. ARGENTIERI: Okay.

2 THE COURT: You know, as I tell my law clerk, we're
3 writing this for a jury. I give the jury the charge to take in
4 and I like it to be as clear as possible.

5 And I'd like to make it clear that January -- it's
6 the same thing with respect to January, that it only -- it only
7 includes a specific date unknown to the grand jury, in or about
8 January 13 -- January, 2016. And I don't mind Count 13 being in
9 parentheses.

10 MS. ARGENTIERI: Okay.

11 THE COURT: I could do it. I was planning to do this
12 myself, but --

13 MS. ARGENTIERI: Okay.

14 THE COURT: But either way -- Judge, if you want to
15 do it so it's just the way you want it, I don't want to get
16 back and take some artistic license with it again and then have
17 to fix it again tomorrow.

18 THE COURT: No, I don't -- believe me, I don't have
19 any artistic license.

20 MS. ARGENTIERI: Okay. I didn't mean to suggest I
21 was --

22 MR. RICCO: Judge, we would concur to get it done.

23 THE COURT: Okay. Now what about the indictment?

24 MS. ARGENTIERI: I'm sorry, Judge. I misunderstood
25 you. I thought that's what we were looking at. We took the --

Colloquy

918

1 THE COURT: No, I was looking at my jury
2 instructions.

3 (Pause.)

4 MS. ARGENTIERI: We made exactly the same change to
5 the indictment that was in the jury instruction. We just
6 pulled it right from there. So both of them will need to be
7 changed to reflect --

8 THE COURT: For January.

9 MS. ARGENTIERI: Yes.

10 THE COURT: Okay.

11 MS. ARGENTIERI: And both -- it sounds like Mr. Ricco
12 and the government are both okay with that.

13 THE COURT: Okay. And with respect to your
14 duplicitous counts, which you claim are not duplicitous,
15 theoretically they're not. I'm going go tell the jury at some
16 appropriate place in the charge that often one particular
17 criminal act can violate more than one criminal statute.

18 And that the issue is not how many -- and each
19 violation could be a count in the indictment. And that the
20 issue for them to decide should not be influenced by the number
21 of counts, but by whether the defendant actually committed the
22 acts that are charged in each count.

23 MS. ARGENTIERI: That makes sense.

24 THE COURT: Good. Most of what I say makes sense.

25 MS. ARGENTIERI: I agree.

Colloquy

919

1 THE COURT: But you don't always agree.

2 MS. ARGENTIERI: Okay.

3 MR. RICCO: Judge, if I could have a moment.

4 (Pause.)

5 MR. RICCO: Your Honor, just -- Mr. Martinez has been
6 in the courtroom throughout this afternoon. He was out earlier,
7 but he is in complete agreement with the way in which we're
8 proceeding on the jury instructions and on the indictment.

9 THE COURT: Is that correct?

10 THE DEFENDANT: Correct.

11 THE COURT: I'm doing it for your benefit.

12 THE DEFENDANT: Thank you, Your Honor.

13 THE COURT: You are the one who has a right in an
14 indictment by a grand jury, so I would only change it with your
15 consent.

16 THE DEFENDANT: Yes.

17 THE COURT: And, Judge the other remaining thing is
18 that Mr. Martinez has been advised of his absolute right to
19 testify and he's decided not to exercise that right in this
20 case.

21 THE COURT: Do you understand, Mr. Martinez, that
22 under the Constitution of the United States you have a right to
23 testify as a witness in your own defense?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And is it your decision not to testify?

Colloquy

920

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Okay. So I will see you -- I didn't ask
3 you whether you -- I know Mr. Ricco said he had no objections.
4 You were going to try and resolve --

5 MS. SHIHATA: Yes, I think the minor changes were
6 what Mr. Ricco and I discussed earlier this afternoon, but I
7 will --

8 THE COURT: No, no. They've been included?

9 MS. SHIHATA: Yes. Yes.

10 THE COURT: So they're already in there.

11 MS. SHIHATA: They're in the redline that I sent to
12 the parties and the court, and sent it to the court, yes.

13 THE COURT: But you both agree, so I don't have to
14 spend time on it tomorrow morning.

15 MR. RICCO: Good. Thank you.

16 THE COURT: So we'll basically -- although you can
17 never tell what you'll think of between now and then. We're
18 basically pretty much ready to go in the morning.

19 MS. SHIHATA: Yes, Your Honor.

20 MS. ARGENTIERI: Yes, Judge.

21 THE COURT: Okay.

22 MR. RICCO: Thank you. Good night, Judge.

23 MS. ARGENTIERI: Have a good night.

24 THE COURT: By the way, I've tried -- and if I missed
25 you'll tell me.

Colloquy

921

1 The emails that pass between us and your responses,
2 they're all going to be marked as court exhibits.

3 MS. ARGENTIERI: Yes.

4 MR. RICCO: That's fine.

5 THE COURT: It's good that we were able over the
6 weekend to work and this in a way to make a record of what was
7 -- what we communicated with each other.

8 MS. ARGENTIERI: Understood.

9 MR. RICCO: Thank you, Judge.

10 MS. SHIHATA: Thank you, Your Honor.

11 THE COURT: There's one other thing I need to
12 address. I don't know how we can resolve it.

13 THE CLERK: Counsel.

14 MR. RICCO: Yes.

15 THE COURT: As I indicated, the witness from the MDC
16 said you could essentially bring an action under the Federal
17 Tort Claims Act for negligence. That was not a correct answer.

18 And I don't know whether it passed over the jury's
19 head or not, but it's important -- I mean, it's important that
20 there -- it's important in terms of her credibility. I'm not
21 making any judgments. I'm just talking about how a court would
22 view this.

23 It's important to her credibility that she can bring
24 such a suit.

25 MS. ARGENTIERI: Right.

Colloquy

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1 THE COURT: And she indicated she's not sure whether
2 she's going to bring it or not. That's for the jury to decide
3 whether they want to believe it but at least there should be no
4 misimpression left about their ability to bring such a lawsuit.

5 Now you could do it -- I was going to suggest that
6 you just do a short stipulation.

7 MS. ARGENTIERI: Okay.

8 MR. RICCO: Okay.

9 THE COURT: That --

10 MS. ARGENTIERI: We'll work that out tonight.

11 MR. RICCO: Yes.

12 THE COURT: Okay.

13 MS. ARGENTIERI: Thank you, Judge.

14 MR. RICCO: Okay.

15 (Proceedings adjourned at 4:53 p.m.)
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1 I, LINDA FERRARA, Certified Electronic Transcriber,
2 certify that the foregoing is a correct transcript from the
3 official electronic sound recording of the proceedings in the
4 above-entitled matter.

5
6 

7 _____ January 16, 2018

8 Linda Ferrara, CET-656
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10

11 I, CHRISTINE FIORE, Certified Electronic Court Reporter
12 and Transcriber, certify that the foregoing is a correct
13 transcript from the official electronic sound recording of the
14 proceedings in the above-entitled matter.

15
16 

17 _____ January 16, 2018

18 Christine Fiore, CERT-410
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